

ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)

Act 386 of 1998

ARTICLE V

PROTECTION OF AN INDIVIDUAL UNDER DISABILITY AND HIS OR HER PROPERTY

PART 1

GENERAL PROVISIONS

700.5101 General definitions.

Sec. 5101. As used in parts 1 to 4 of this article:

(a) "Best interests of the minor" means the sum total of the following factors to be considered, evaluated, and determined by the court:

(i) The love, affection, and other emotional ties existing between the parties involved and the child.

(ii) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue educating and raising the child in the child's religion or creed, if any.

(iii) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

(iv) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(v) The permanence, as a family unit, of the existing or proposed custodial home.

(vi) The moral fitness of the parties involved.

(vii) The mental and physical health of the parties involved.

(viii) The child's home, school, and community record.

(ix) The child's reasonable preference, if the court considers the child to be of sufficient age to express a preference.

(x) The party's willingness and ability to facilitate and encourage a close and continuing parent-child relationship between the child and his or her parent or parents.

(xi) Domestic violence regardless of whether the violence is directed against or witnessed by the child.

(xii) Any other factor considered by the court to be relevant to a particular dispute regarding termination of a guardianship, removal of a guardian, or parenting time.

(b) "Claim" includes, in respect to a protected individual, a liability of the protected individual, whether arising in contract, tort, or otherwise, and a liability of the estate that arises at or after the appointment of a conservator, including expenses of administration.

(c) "Conservator" includes, but is not limited to, a limited conservator described in section 5419(1).

(d) "Visitor" means an individual appointed in a guardianship or protective proceeding who is trained in law, nursing, or social work, is an officer, employee, or special appointee of the court, and has no personal interest in the proceeding.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5102 Payment or delivery.

Sec. 5102. (1) A person under a duty to pay or deliver money or personal property to a minor may perform this duty by paying or delivering the money or property, in an aggregate value that does not exceed \$5,000.00 each year, to any of the following:

(a) The minor if he or she is married.

(b) An individual having the care and custody of the minor with whom the minor resides.

(c) A guardian of the minor.

(d) A financial institution incident to a deposit in a state or federally insured savings account in the sole name of the minor with notice of the deposit to the minor.

(2) This section does not apply if the person making payment or delivery knows that a conservator has been appointed or a proceeding for appointment of a conservator of the minor's estate is pending.

(3) Other than the minor or a financial institution, an individual receiving money or property for a minor is obligated to apply the money to the minor's support and education, but shall not pay himself or herself except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. An excess amount shall be preserved for the minor's future support and education. A balance not used for those purposes and property received for the minor shall be turned over to the minor when majority is

attained. A person who pays or delivers money or property in accordance with this section is not responsible for the proper application of the money or property.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5103 Delegation of powers by parent or guardian.

Sec. 5103. (1) By a properly executed power of attorney, a parent or guardian of a minor or a guardian of a legally incapacitated individual may delegate to another person, for a period not exceeding 6 months, any of the parent's or guardian's powers regarding care, custody, or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward or to release of a minor ward for adoption.

(2) If a parent or guardian is serving in the armed forces of the United States and is deployed to a foreign nation, and if the power of attorney so provides, a delegation under this section is effective until the thirty-first day after the end of the deployment.

(3) If a guardian for a minor or legally incapacitated individual delegates any power under this section, the guardian shall notify the court within 7 days after execution of the power of attorney and provide the court the name, address, and telephone number of the attorney-in-fact.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2004, Act 93, Imd. Eff. May 7, 2004.

Popular name: EPIC

700.5104 Request or notice; interested person.

Sec. 5104. (1) An interested person who desires to be notified before an order is made in a guardianship proceeding, including a proceeding subsequent to the appointment of a guardian under section 5312, or in a protective proceeding under section 5401 must file a request for notice with the register of the court in which the proceeding is pending and with the attorney of record of the guardian or conservator or, if none, with the guardian or conservator, if any. A request is not effective unless it contains a statement showing the interest of the person making it and the address of that person or an attorney to whom notice is to be given. The request is effective only as to a proceeding that occurs after the filing. If a guardianship or protective proceeding is not pending at the time a person files a request for notice as authorized by this subsection, the person shall pay a fee for filing the request, which fee shall be in the same amount as, but is separate from, the fee required to commence such a proceeding.

(2) A governmental agency paying benefits to the individual to be protected or before whom an application for benefits is pending is an interested person in a protective proceeding.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5105 Kidney donation by minor.

Sec. 5105. The court has jurisdiction of the matter described in this section. If authorized by order of the court that has jurisdiction of the prospective donor, a person 14 years of age or older may give 1 of his or her 2 kidneys to a father, mother, son, daughter, brother, or sister for a transplantation needed by the intended donee. A guardian, parent, spouse, child, or other next of kin of the prospective donor, other than the intended donee, may file a petition for an order under this section. If the prospective donor does not have a guardian, the court shall appoint a guardian ad litem to protect the prospective donor's interests. The court shall hold a hearing on the petition and cause notice of the hearing to be given. The prospective donor shall be present at the hearing and shall be examined by the petitioner or the court, or both. If the court determines that the prospective donor is sufficiently sound of mind to understand the needs and probable consequences of the gift to both the donor and donee and agrees to the gift, the court may enter an order authorizing the making of the gift.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5106 Appointment or approval of professional guardian or professional conservator as guardian or conservator; appointment of nonbanking corporation to act as fiduciary in state.

Sec. 5106. (1) Subject to the other provisions of this section, the court may appoint or approve a professional guardian or professional conservator, as appropriate, as a guardian or conservator under this act, or as a plenary guardian or partial guardian as those terms are defined in section 600 of the mental health code, 1974 PA 258, MCL 330.1600.

(2) The court shall only appoint a professional guardian or professional conservator as authorized under

subsection (1) if the court finds on the record all of the following:

(a) The appointment of the professional guardian or professional conservator is in the ward's, developmentally disabled individual's, incapacitated individual's, or protected individual's best interests.

(b) There is no other person that is competent, suitable, and willing to serve in that fiduciary capacity in accordance with section 5212, 5313, or 5409.

(3) The court shall not appoint a professional guardian or professional conservator as authorized under subsection (1) unless the professional guardian or professional conservator files a bond in an amount and with the conditions as determined by the court. For a professional conservator, the sureties and liabilities of the bond shall be as provided in sections 5410 and 5411.

(4) A professional guardian or professional conservator appointed under this section shall not receive as a result of that appointment a benefit beyond compensation specifically authorized for that type of fiduciary by this act or the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

(5) A professional guardian appointed under this section shall establish and maintain a schedule of visitation so that an individual associated with the professional guardian who is responsible for the ward's care visits the ward within 3 months after the professional guardian's appointment and not less than once within 3 months after each previous visit.

(6) A professional guardian appointed under this section shall ensure that there are a sufficient number of employees assigned to the care of wards for the purpose of performing the necessary duties associated with ensuring that proper and appropriate care is provided.

(7) For the purposes of the statutory authorization required by section 1105(2)(e) of the banking code of 1999, 1999 PA 276, MCL 487.11105, to act as a fiduciary in this state, if the court appoints a for-profit or nonprofit, nonbanking corporation organized under the laws of this state to serve in a fiduciary capacity that is listed in subsection (1), the nonbanking corporation is authorized to act in that fiduciary capacity. The authorization under this subsection confers the fiduciary capacity only to the extent necessary in the particular matter of each appointment and is not a general grant of fiduciary authority. A nonbanking corporation is not authorized to act in any other fiduciary capacity.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 463, Eff. June 1, 2001.

Popular name: EPIC

700.5107 Entry into or removal from LEIN.

Sec. 5107. (1) Upon entry of an order finding that an individual is legally incapacitated, the court shall immediately order the department of state police to enter the order into the law enforcement information network.

(2) Upon entry of an order finding that an individual is no longer legally incapacitated, the court shall immediately order the department of state police to remove from the law enforcement information network the court order entered into the law enforcement information network under subsection (1) that found that the individual was legally incapacitated.

(3) The department of state police shall immediately enter an order into the law enforcement information network or shall immediately remove an order from the law enforcement information network as ordered by the court under this section.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5108 Appointment of guardian ad litem; preference prohibited.

Sec. 5108. The person that commences an action or procedure under this article, or that makes a motion for, or in another manner requests, the appointment of a guardian ad litem under this article, shall not choose or indicate in any manner the person's preference as to a particular person for appointment as guardian ad litem.

History: Add. 2000, Act 465, Eff. June 1, 2001.

Popular name: EPIC

700.5109 Release from liability for injury of minor during recreational activity.

Sec. 5109. (1) Before a minor participates in recreational activity, a parent or guardian of the minor may release a person from liability for economic or noneconomic damages for personal injury sustained by the minor during the specific recreational activity for which the release is provided.

(2) This section only applies to a recreational activity sponsored or organized by a nongovernmental, nonprofit organization.

(3) Either or both of the following may be released from liability under this section:

- (a) The sponsor or organizer of the recreational activity.
- (b) An individual who is paid or volunteers to coach or assists in conducting the recreational activity.
- (4) A release under this section only releases the sponsor, organizer, owner, lessee, or other person released from liability for injury or death that results solely from the inherent risks of the recreational activity. A release under this section does not limit the liability of the sponsor, organizer, owner, lessee, or other person released for the sponsor's, organizer's, owner's, lessee's, or other person's own negligence or the negligence of its employees or agents that causes or contributes to the injury or death.
- (5) A release under this section must be in writing.
- (6) This section does not restrict the limitation of liability afforded by section 73301 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.73301, or 1964 PA 170, MCL 691.1401 to 691.1419.
- (7) As used in this section:
 - (a) "Camping activity" means a recreation activity planned and carried out by the owner and operator of a camp.
 - (b) "Recreational activity" means active participation in an athletic or recreational sport or in a camping activity.

History: Add. 2011, Act 61, Imd. Eff. June 21, 2011;—Am. 2016, Act 187, Eff. Sept. 19, 2016.

Popular name: EPIC

PART 2 GUARDIANS OF MINORS

700.5201 Appointment and status of guardians of minor.

Sec. 5201. A person may become a minor's guardian by parental appointment or court appointment. The guardianship status continues until terminated, without regard to the location from time to time of the guardian or minor ward.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5202 Parental appointment of guardian for minor.

Sec. 5202. (1) The parent of an unmarried minor may appoint a guardian for the minor by will or by another writing signed by the parent and attested by at least 2 witnesses.

(2) Subject to the right of the minor under section 5203, if both parents are dead or have been adjudged to be legally incapacitated or the surviving parent has no parental rights or has been adjudged to be legally incapacitated, a parental appointment becomes effective when the guardian's acceptance is filed in the court in which the will containing the nomination is probated or, if the nomination is contained in a nontestamentary nominating instrument or the testator who made the nomination is not deceased, when the guardian's acceptance is filed in the court at the place where the minor resides or is present. If both parents are dead, an effective appointment by the parent who died later has priority.

(3) A parental appointment effected by filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this state.

(4) Upon acceptance of appointment, the guardian shall give written notice of acceptance to the minor and to the person having the minor's care or the minor's nearest adult relative.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005.

Popular name: EPIC

700.5202a Appointment of guardian in another state as temporary guardian.

Sec. 5202a. (1) If a guardian has not been appointed in this state and a petition for the appointment of a guardian is not pending in this state, a guardian appointed, qualified, and serving in good standing in another state may be appointed immediately as temporary guardian in this state on filing with a court in this state an application for appointment, an authenticated copy of the guardian's appointment in the other state, and an acceptance of appointment. Letters of guardianship for the temporary guardian expire 28 days after the date of appointment.

(2) Within 14 days after appointment as temporary guardian under subsection (1), the guardian shall give notice to all interested persons of his or her appointment and the right to object to the appointment. On filing proof of service of the notice with the court, the temporary guardian shall be appointed full guardian and the court shall issue letters of guardianship accordingly.

(3) If an objection is filed to a guardianship under this section, the guardianship continues unless a court in

this state enters an order removing the guardian.

History: Add. 2012, Act 545, Imd. Eff. Jan. 2, 2013.

700.5203 Objection by minor of 14 years or older to parental appointment.

Sec. 5203. A minor 14 years of age or older who is the subject of a parental appointment may prevent an appointment or cause it to terminate by filing with the court in which the nominating instrument is filed a written objection to the appointment before it is accepted or within 28 days after its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the parental nominee or another suitable person.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5204 Court appointment of guardian of minor; conditions for appointment.

Sec. 5204. (1) A person interested in the welfare of a minor, or a minor if 14 years of age or older, may petition for the appointment of a guardian for the minor. The court may order the family independence agency or a court employee or agent to conduct an investigation of the proposed guardianship and file a written report of the investigation.

(2) The court may appoint a guardian for an unmarried minor if any of the following circumstances exist:

(a) The parental rights of both parents or the surviving parent are terminated or suspended by prior court order, by judgment of divorce or separate maintenance, by death, by judicial determination of mental incompetency, by disappearance, or by confinement in a place of detention.

(b) The parent or parents permit the minor to reside with another person and do not provide the other person with legal authority for the minor's care and maintenance, and the minor is not residing with his or her parent or parents when the petition is filed.

(c) All of the following:

(i) The minor's biological parents have never been married to one another.

(ii) The minor's parent who has custody of the minor dies or is missing and the other parent has not been granted legal custody under court order.

(iii) The person whom the petition asks to be appointed guardian is related to the minor within the fifth degree by marriage, blood, or adoption.

(3) A minor's limited guardian may petition to be appointed a guardian for that minor, except that the petition shall not be based upon suspension of parental rights by the order that appointed that person the limited guardian for that minor.

(4) A guardian appointed under section 5202 whose appointment is not prevented or nullified under section 5203 has priority over a guardian who may be appointed by the court. The court may proceed with an appointment upon a finding that a guardian appointed in a manner described in section 5202 has failed to accept the appointment within 28 days after the notice of the guardianship proceeding.

(5) For the minor ward's welfare, the court may at any time order the minor ward's parents to pay reasonable support and order reasonable parenting time and contact of the minor ward with his or her parents.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005.

Popular name: EPIC

700.5205 Court appointment of limited guardian; requirements.

Sec. 5205. (1) The court may appoint a limited guardian for an unmarried minor upon the petition of the minor's parent or parents if all of the following requirements are met:

(a) The parents with custody of the minor consent or, in the case of only 1 parent having custody of the minor, the sole parent consents to the appointment of a limited guardian.

(b) The parent or parents voluntarily consent to the suspension of their parental rights.

(c) The court approves a limited guardianship placement plan agreed to by both of the following parties:

(i) The parents with custody of the minor or, in the case of only 1 parent having custody of the minor, the sole parent who has custody of the minor.

(ii) The person or persons whom the court will appoint as the minor's limited guardian.

(2) A minor's parent or parents who desire to have the court appoint a limited guardian for that minor and the person or persons who desire to be appointed limited guardian for that minor must develop a limited guardianship placement plan. The parties must use a limited guardianship placement plan form prescribed by the state court administrator. A limited guardianship placement plan form must include a notice that informs a parent who is a party to the plan that substantial failure to comply with the plan without good cause may result in the termination of the parent's parental rights under chapter XIA of 1939 PA 288, MCL 712A.1 to

712A.32. The proposed limited guardianship placement plan shall be attached to the petition requesting the court to appoint a limited guardian. The limited guardianship placement plan shall include provisions concerning all of the following:

- (a) The reason the parent or parents are requesting the court to appoint a limited guardian for the minor.
- (b) Parenting time and contact with the minor by his or her parent or parents sufficient to maintain a parent and child relationship.
- (c) The duration of the limited guardianship.
- (d) Financial support for the minor.
- (e) Any other provisions that the parties agree to include in the plan.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5206 Review modification of plan; powers and duties of limited guardian.

Sec. 5206. (1) The court shall review a proposed limited guardianship placement plan filed with the court under section 5205 and shall do 1 of the following:

- (a) Approve the proposed plan.
- (b) Disapprove the proposed plan.
- (c) On its own motion, modify a proposed plan and approve it as modified, if the parties agree to the modification. The modified plan shall be filed with the court.

(2) A limited guardianship placement plan that has been approved by the court may be modified upon agreement of the parties and approval of the court. A modified limited guardianship placement plan shall be filed with the court.

(3) The voluntary suspension of parental rights under section 5205 does not prevent the parent or parents from filing a petition to terminate the limited guardianship at any time as provided in section 5208. Appointment of a limited guardian under this section is a continuing appointment.

(4) A limited guardian appointed under this section has all of the powers and duties enumerated in section 5215 except that a minor's limited guardian shall not consent to marriage or adoption of the minor ward or to the release of the minor ward for adoption.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5207 Review of guardianship of minor.

Sec. 5207. (1) The court may review a guardianship for a minor as it considers necessary and shall review a guardianship annually if the minor is under 6 years of age. In conducting the review, the court shall consider all of the following factors:

- (a) The parent's and guardian's compliance with either of the following, as applicable:
 - (i) A limited guardianship placement plan.
 - (ii) A court-structured plan under subsection (3)(b)(ii)(B) or section 5209(2)(b)(ii).
- (b) Whether the guardian has adequately provided for the minor's welfare.
- (c) The necessity of continuing the guardianship.
- (d) The guardian's willingness and ability to continue to provide for the minor's welfare.
- (e) The effect upon the minor's welfare if the guardianship is continued.
- (f) Any other factor that the court considers relevant to the minor's welfare.

(2) The court may order the family independence agency or a court employee or agent to conduct an investigation and file a written report of the investigation regarding the factors listed in subsection (1).

(3) Upon completion of a guardianship review, the court may do either of the following:

- (a) Continue the guardianship.
- (b) Schedule and conduct a hearing on the guardianship's status and do any of the following:
 - (i) If the guardianship is a limited guardianship, do either of the following:
 - (A) Continue the limited guardianship.
 - (B) Order the parties to modify the limited guardianship placement plan as a condition to continuing the limited guardianship.
 - (ii) If the guardianship was established under section 5204, do either of the following:
 - (A) Continue the guardianship.
 - (B) Order the parties to follow a court-structured plan designed to resolve the conditions identified at the review hearing.

(iii) Take an action described in section 5209(2).

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5208 Petition to terminate guardianship of minor.

Sec. 5208. (1) A minor's parent or parents may petition the court to terminate a guardianship for the minor as follows:

(a) If the guardianship is a limited guardianship, the parents or the sole parent with a right to custody of the minor.

(b) If the guardianship was established under section 5204, the minor's parent or parents.

(2) If a petition is filed to terminate a guardianship under this section, the court may do 1 or more of the following:

(a) Order the family independence agency or a court employee or agent to conduct an investigation and file a written report of the investigation regarding the best interests of the minor or give testimony concerning the investigation.

(b) Utilize the community resources in behavioral sciences and other professions in the investigation and study of the best interests of the minor and consider their recommendations for the disposition of the petition.

(c) Appoint a guardian ad litem or attorney to represent the minor.

(d) Take any other action considered necessary in a particular case.

(3) This section and section 5209 apply to all guardianships established before, on, or after the effective date of this section.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5209 Court action on petition to terminate guardianship of minor.

Sec. 5209. (1) After notice and hearing on a petition under section 5208 to terminate a limited guardianship, the court shall terminate the limited guardianship if it determines that the minor's parent or parents have substantially complied with the limited guardianship placement plan. The court may enter orders to facilitate the minor's reintegration into the home of the parent or parents for a period of up to 6 months before the termination.

(2) For a petition to terminate a guardianship in which subsection (1) does not apply, after notice and hearing, the court may do any of the following:

(a) Terminate the guardianship if the court determines that it is in the best interests of the minor, and do any of the following:

(i) Enter orders to facilitate the minor's reintegration into the parent's home for a period of up to 6 months before the termination.

(ii) Order the family independence agency to supervise the transition period when the minor is being reintegrated into his or her parent's home.

(iii) Order the family independence agency to provide services to facilitate the minor's reintegration into his or her parent's home.

(b) Continue the guardianship for not more than 1 year after the hearing date if the court determines that it is in the best interests of the minor, and do any of the following:

(i) If the guardianship is a limited guardianship, order the parent or parents to comply with 1 of the following:

(A) The limited guardianship placement plan.

(B) A court-modified limited guardianship placement plan.

(C) If the limited guardianship was established before December 20, 1990, a court-structured plan that enables the minor to return to the home of his or her parent or parents.

(ii) If the guardianship is ordered under section 5204, order the parent or parents to follow a court-structured plan that enables the minor to return to the home of his or her parent or parents.

(iii) If a guardianship is continued under subparagraph (i) or (ii), schedule and conduct a hearing to review the guardianship before the expiration of the period of time that the guardianship is continued and either terminate the guardianship or limited guardianship or proceed under subdivision (c) or (d).

(c) If the minor resides with the guardian or limited guardian for not less than 1 year and if the court finds that the minor's parent or parents have failed to provide the minor with parental care, love, guidance, and attention appropriate to the child's age and individual needs resulting in a substantial disruption of the parent-child relationship, continue the guardianship if it is established by clear and convincing evidence that the continuation would serve the best interests of the minor.

(d) Appoint an attorney to represent the minor or refer the matter to the family independence agency. The attorney or the family independence agency may file a complaint on behalf of the minor requesting the family

division of the circuit court to take jurisdiction of the minor under section 2(b) of chapter XIA of 1939 PA 288, MCL 712A.2.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5210 Order for termination of guardianship of minor.

Sec. 5210. Upon receipt of a copy of a judgment or an order of disposition in a child custody action regarding a minor that is sent to the court as provided in section 6b of the child custody act of 1970, 1970 PA 91, MCL 722.26b, the court shall terminate the guardianship or limited guardianship for that minor.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5211 Venue.

Sec. 5211. The venue for a guardianship proceeding for a minor is in the place where the minor resides or is present at the time the proceeding is commenced.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5212 Court appointment of guardian of minor; qualifications; priority of minor's nominee.

Sec. 5212. The court may appoint as guardian a person whose appointment serves the minor's welfare, including a professional guardian described in section 5106. If the minor is 14 years of age or older, the court shall appoint a person nominated by the minor, unless the court finds the appointment contrary to the minor's welfare.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 463, Eff. June 1, 2001.

Popular name: EPIC

700.5213 Procedure for court appointment of guardian, temporary guardian, or lawyer-guardian ad litem for minor.

Sec. 5213. (1) The petitioner shall give notice of the time and place of hearing of a petition for the appointment of a minor's guardian to each of the following:

- (a) The minor, if 14 years of age or older.
- (b) The person who had the principal care and custody of the minor during the 63 days preceding the date of the petition.
- (c) Each living parent of the minor or, if neither of them is living, the adult nearest of kin to the minor.

(2) Upon hearing, if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of section 5204 or of sections 5205 and 5206 are satisfied, and the minor's welfare will be served by the requested appointment, the court shall make the appointment. In other cases, the court may dismiss the proceeding or make another disposition of the matter that will serve the minor's welfare.

(3) If necessary, the court may appoint a temporary guardian with the status of an ordinary guardian of a minor, but the temporary guardian's authority shall not exceed 6 months.

(4) If, at any time in the proceeding, the court determines that the minor's interests are or may be inadequately represented, the court may appoint a lawyer-guardian ad litem to represent the minor, giving a consideration to the preference of the minor if the minor is 14 years of age or older.

(5) A lawyer-guardian ad litem appointed under this act represents the child and has powers and duties in relation to that representation as set forth in section 17d of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.17d. All provisions of section 17d of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.17d, apply to a lawyer-guardian ad litem appointed under this act. In addition, both of the following apply under this act:

(a) In a proceeding in which a lawyer-guardian ad litem represents a child, he or she may file a written report and recommendation. The court may read the report and recommendation. The court shall not, however, admit the report and recommendation into evidence unless all parties stipulate the admission. The parties may make use of the report and recommendation for purposes of a settlement conference.

(b) After a determination of ability to pay, the court may assess all or part of the costs and reasonable fees of a lawyer-guardian ad litem against 1 or more of the parties involved in the proceedings or against the money allocated from marriage license fees for family counseling services under section 3 of 1887 PA 128, MCL 551.103. A lawyer-guardian ad litem shall not be paid a fee unless the court first reviews and approves

the fee.

(6) To assist the court in determining a child's best interest, the court may appoint a guardian ad litem for a child involved in a proceeding under this section.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5214 Consent to service by acceptance of appointment; notice.

Sec. 5214. By accepting a parental or court appointment as guardian, a guardian submits personally to the court's jurisdiction in a proceeding relating to the guardianship that may be instituted by an interested person. The petitioner shall cause notice of a proceeding to be delivered to the guardian or mailed to the guardian by first-class mail at the guardian's address listed in the court records and to the address then known to the petitioner. Letters of guardianship must indicate whether the guardian was appointed by court order or parental nomination.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5215 Powers and duties of guardian of minor.

Sec. 5215. A minor's guardian has the powers and responsibilities of a parent who is not deprived of custody of the parent's minor and unemancipated child, except that a guardian is not legally obligated to provide for the ward from the guardian's own money and is not liable to third persons by reason of the parental relationship for the ward's acts. A guardian has all of the following powers and duties:

(a) The guardian shall take reasonable care of a ward's personal effects and commence a protective proceeding if necessary to protect the ward's other property. If a guardian commences a protective proceeding because the guardian believes that it is in the ward's best interest to sell or otherwise dispose of the ward's real property or interest in real property, the court may appoint the guardian as special conservator and authorize the special conservator to proceed under section 5423(3). A guardian shall not otherwise sell the ward's real property or interest in real property.

(b) The guardian may receive money payable for the ward's support to the ward's parent, guardian, or custodian under the terms of a statutory benefit or insurance system, or a private contract, devise, trust, conservatorship, or custodianship. The guardian may receive the ward's money or property paid or delivered under section 5102. Money or property received under that section shall be applied to the ward's current needs for support, care, and education. The guardian shall exercise due care to conserve any excess for the ward's future needs unless a conservator is appointed for the ward's estate, in which case the excess shall be paid over at least annually to the conservator. The guardian shall not use that money or property for compensation for the guardian's services except as approved by court order or as determined by a duly appointed conservator other than the guardian. A guardian may institute a proceeding to compel a person's performance of a duty to support the ward or to pay money for the ward's welfare.

(c) The guardian shall facilitate the ward's education and social or other activities, and shall authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would be illegal for a parent to have consented.

(d) A guardian may consent to a minor ward's marriage.

(e) Subject to the conditions and restrictions of chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, a guardian may consent to marriage or adoption of a minor ward or to the release of a minor ward for adoption.

(f) A guardian must report the condition of the ward and of the ward's estate that is subject to the guardian's possession or control as ordered by the court on petition of a person interested in the minor's welfare or as required by court rule. The report must detail the condition of the ward, medical or mental health treatment or care to which the ward was subjected, and what reason, if any, exists for the continuation of the guardianship.

(g) Within 14 days after a change in the ward's place of residence, the guardian shall give to the court notice of the ward's new address.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 469, Eff. June 1, 2001.

Popular name: EPIC

700.5216 Compensation; claim for burial expense.

Sec. 5216. (1) A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board, and clothing personally provided to the ward, but only as approved by court

order.

(2) If a minor dies while under guardianship and a conservator has not been appointed for the minor's estate and if the guardian has possession of any money of the deceased minor, upon petition of the guardian and with or without notice, the court may hear a claim for burial expenses or another claim as the court considers advisable. Upon hearing the claim, the court may enter an order allowing or disallowing the claim or a part of it and may provide in an order of allowance that the claim or a part of it be paid immediately if the payment can be made without injury or serious inconvenience to the minor's estate.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5217 Termination of appointment of guardian.

Sec. 5217. A guardian's authority and responsibility terminate upon the guardian's death, resignation, or removal or upon the minor's death, adoption, marriage, or attainment of majority. However, a termination does not affect the guardian's liability for prior acts or the obligation to account for the ward's money and property. The guardian's resignation does not terminate the guardianship until it is approved by the court. A parental appointment under an unprobated or informally probated will terminates if the will is later denied probate in a formal proceeding.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005.

Popular name: EPIC

700.5218 Proceedings subsequent to appointment; venue.

Sec. 5218. (1) The court at the place where the ward resides has concurrent jurisdiction over resignation, removal, accounting, or another proceeding relating to the guardianship with the court that appointed the guardian or in which acceptance of a parental appointment was filed.

(2) If the court located where the ward resides is neither the appointing court nor the court in which acceptance of appointment is filed, the court in which a proceeding subsequent to appointment is commenced in all appropriate cases shall notify the other court, in this or another state, and after consultation with that court, shall determine whether to retain jurisdiction or transfer the proceeding to the other court, whichever will serve the ward's welfare. A copy of an order accepting a resignation or removing a guardian shall be sent to the appointing court or the court in which acceptance of appointment is filed.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5219 Resignation, removal, and other post-appointment proceedings.

Sec. 5219. (1) A person interested in a ward's welfare or, if 14 years of age or older, the ward may petition for the removal of a guardian on the ground that removal would serve the ward's welfare or for another order that would serve the ward's welfare. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for a successor guardian's appointment.

(2) Notice of a hearing on a petition for an order after a guardian's appointment must be given to the ward, the guardian, and any other person as ordered by the court or as provided by court rule.

(3) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make further order that may be appropriate.

(4) If the court determines at any time in a proceeding that the ward's interest is or may be inadequately represented, the court may appoint a lawyer-guardian ad litem to represent the minor, giving consideration to the preference of the minor if the minor is 14 years of age or older.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

PART 3

GUARDIANS OF INCAPACITATED INDIVIDUALS

700.5301 Appointment of guardian for incapacitated person by will or other writing.

Sec. 5301. (1) If serving as guardian, the parent of an unmarried legally incapacitated individual may appoint by will, or other writing signed by the parent and attested by at least 2 witnesses, a guardian for the legally incapacitated individual. If both parents are dead or the surviving parent is adjudged legally incapacitated, a parental appointment becomes effective when, after having given 7 days' prior written notice of intention to do so to the legally incapacitated individual and to the person having the care of the legally incapacitated individual or to the nearest adult relative, the guardian files acceptance of appointment in the

court in which the will containing the nomination is probated or, if the nomination is contained in a nontestamentary nominating instrument or the testator who made the nomination is not deceased, when the guardian's acceptance is filed in the court at the place where the legally incapacitated individual resides or is present. The notice must state that the appointment may be terminated by filing a written objection in the court as provided by subsection (4). If both parents are dead, an effective appointment by the parent who died later has priority.

(2) If serving as guardian, the spouse of a married legally incapacitated individual may appoint by will, or other writing signed by the spouse and attested by at least 2 witnesses, a guardian of the legally incapacitated individual. The appointment becomes effective when, after having given 7 days' prior written notice of intention to do so to the legally incapacitated individual and to the person having care of the legally incapacitated individual or to the nearest adult relative, the guardian files acceptance of appointment in the court in which the will containing the nomination is probated or, if the nomination is contained in a nontestamentary nominating instrument or the testator who made the nomination is not deceased, when the guardian's acceptance is filed in the court at the place where the legally incapacitated individual resides or is present. The notice must state that the appointment may be terminated by filing a written objection in the court as provided by subsection (4).

(3) An appointment effected by filing the guardian's acceptance under a will probated in the state of the decedent's domicile is effective in this state.

(4) Upon the filing of the legally incapacitated individual's written objection to a guardian's appointment under this section in either the court in which the will was probated or, for a nontestamentary nominating instrument or a testamentary nominating instrument made by a testator who is not deceased, the court at the place where the legally incapacitated individual resides or is present, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the parental or spousal nominee or another suitable person upon an adjudication of incapacity in a proceeding under sections 5302 to 5317.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005.

Popular name: EPIC

700.5301a Appointment of guardian in another state as temporary guardian.

Sec. 5301a. (1) If a guardian has not been appointed in this state and a petition for the appointment of a guardian is not pending in this state, a guardian appointed, qualified, and serving in good standing in another state may be appointed immediately as temporary guardian in this state on filing with a court in this state an application for appointment, an authenticated copy of the guardian's appointment in the other state, and an acceptance of appointment. Letters of guardianship for the temporary guardian expire 28 days after the date of appointment.

(2) Within 14 days after appointment as temporary guardian under subsection (1), the guardian shall give notice to all interested persons of his or her appointment and the right to object to the appointment. On filing proof of service of the notice with the court, the temporary guardian shall be appointed full guardian and the court shall issue letters of guardianship accordingly.

(3) If an objection is filed to a guardianship under this section, the guardianship continues unless a court in this state enters an order removing the guardian.

History: Add. 2012, Act 545, Imd. Eff. Jan. 2, 2013.

700.5302 Guardianship proceedings; venue.

Sec. 5302. The venue for a guardianship proceeding for an incapacitated individual is in the place where the incapacitated individual resides or is present. If the incapacitated individual is admitted to an institution by order of a court of competent jurisdiction, venue is also in the county in which that court is located.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5303 Court appointment of guardian of incapacitated person; petition; alternatives to appointment of full guardian; hearing.

Sec. 5303. (1) An individual in his or her own behalf, or any person interested in the individual's welfare, may petition for a finding of incapacity and appointment of a guardian. The petition shall contain specific facts about the individual's condition and specific examples of the individual's recent conduct that demonstrate the need for a guardian's appointment.

(2) Before a petition is filed under this section, the court shall provide the person intending to file the petition with written information that sets forth alternatives to appointment of a full guardian, including, but not limited to, a limited guardian, conservator, patient advocate designation, do-not-resuscitate order, or

durable power of attorney with or without limitations on purpose, authority, or time period, and an explanation of each alternative.

(3) Upon the filing of a petition under subsection (1), the court shall set a date for hearing on the issue of incapacity. Unless the allegedly incapacitated individual has legal counsel of his or her own choice, the court shall appoint a guardian ad litem to represent the person in the proceeding.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 468, Eff. June 1, 2001;—Am. 2013, Act 157, Eff. Feb. 3, 2014.

Popular name: EPIC

700.5304 Evaluation and report; hearing.

Sec. 5304. (1) If necessary, the court may order that an individual alleged to be incapacitated be examined by a physician or mental health professional appointed by the court who shall submit a report in writing to the court at least 5 days before the hearing set under section 5303. A report prepared as provided in this subsection shall not be made a part of the proceeding's public record, but shall be available to the court or an appellate court in which the proceeding is subject to review, to the alleged incapacitated individual, to the petitioner, to their respective legal counsels, and to other persons as the court directs. The report may be used as provided in the Michigan rules of evidence.

(2) The alleged incapacitated individual has the right to secure an independent evaluation, at his or her own expense or, if indigent, at the expense of the state. Compensation for an independent evaluation at public expense shall be in an amount that, based upon time and expense, the court approves as reasonable.

(3) A report prepared under this section shall contain all of the following:

(a) A detailed description of the individual's physical or psychological infirmities.

(b) An explanation of how and to what extent each infirmity interferes with the individual's ability to receive or evaluate information in making decisions.

(c) A listing of all medications the individual is receiving, the dosage of each medication, and a description of the effects each medication has upon the individual's behavior.

(d) A prognosis for improvement in the individual's condition and a recommendation for the most appropriate rehabilitation plan.

(e) The signatures of all individuals who performed the evaluations upon which the report is based.

(4) The individual alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon the individual's condition. If the individual wishes to be present at the hearing, all practical steps shall be taken to ensure his or her presence, including, if necessary, moving the hearing site.

(5) The individual is entitled to be represented by legal counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician or mental health professional and the visitor, and to trial by jury.

(6) The issue of incapacity may be determined at a closed hearing without a jury if requested by the individual alleged to be incapacitated or that individual's legal counsel.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5305 Guardian ad litem; duties; compensation; legal counsel.

Sec. 5305. (1) The duties of a guardian ad litem appointed for an individual alleged to be incapacitated include all of the following:

(a) Personally visiting the individual.

(b) Explaining to the individual the nature, purpose, and legal effects of a guardian's appointment.

(c) Explaining to the individual the hearing procedure and the individual's rights in the hearing procedure, including, but not limited to, all of the following:

(i) The right to contest the petition.

(ii) The right to request limits on the guardian's powers, including a limitation on the guardian's power to execute a do-not-resuscitate order on behalf of the ward.

(iii) The right to object to a particular person being appointed guardian.

(iv) The right to be present at the hearing.

(v) The right to be represented by legal counsel.

(vi) The right to have legal counsel appointed for the individual if he or she is unable to afford legal counsel.

(d) Informing the individual that if a guardian is appointed, the guardian may have the power to execute a do-not-resuscitate order on behalf of the individual and, if meaningful communication is possible, discern if the individual objects to having a do-not-resuscitate order executed on his or her behalf.

(e) Informing the individual of the name of each person known to be seeking appointment as guardian.

(f) Asking the individual and the petitioner about the amount of cash and property readily convertible into cash that is in the individual's estate.

(g) Making determinations, and informing the court of those determinations, on all of the following:

(i) Whether there are 1 or more appropriate alternatives to the appointment of a full guardian or whether 1 or more actions should be taken in addition to the appointment of a guardian. Before informing the court of his or her determination under this subparagraph, the guardian ad litem shall consider the appropriateness of at least each of the following as alternatives or additional actions:

(A) Appointment of a limited guardian, including the specific powers and limitation on those powers the guardian ad litem believes appropriate.

(B) Appointment of a conservator or another protective order under part 4 of this article. In the report informing the court of the determinations under this subdivision, the guardian ad litem shall include an estimate of the amount of cash and property readily convertible into cash that is in the individual's estate.

(C) Execution of a patient advocate designation, do-not-resuscitate order, or durable power of attorney with or without limitations on purpose, authority, or duration.

(ii) Whether a disagreement or dispute related to the guardianship petition might be resolved through court ordered mediation.

(iii) Whether the individual wishes to be present at the hearing.

(iv) Whether the individual wishes to contest the petition.

(v) Whether the individual wishes limits placed on the guardian's powers.

(vi) Whether the individual objects to having a do-not-resuscitate order executed on his or her behalf.

(vii) Whether the individual objects to a particular person being appointed guardian.

(2) The court shall not order compensation of the guardian ad litem unless the guardian ad litem states on the record or in the guardian ad litem's written report that he or she has complied with subsection (1).

(3) If the individual alleged to be incapacitated wishes to contest the petition, to have limits placed on the guardian's powers, or to object to a particular person being appointed guardian and if legal counsel has not been secured, the court shall appoint legal counsel to represent the individual alleged to be incapacitated. If the individual alleged to be incapacitated is indigent, the state shall bear the expense of legal counsel.

(4) If the individual alleged to be incapacitated requests legal counsel or the guardian ad litem determines it is in the individual's best interest to have legal counsel, and if legal counsel has not been secured, the court shall appoint legal counsel. If the individual alleged to be incapacitated is indigent, the state shall bear the expense of legal counsel.

(5) If the individual alleged to be incapacitated has legal counsel appointed under subsection (3) or (4), the appointment of a guardian ad litem terminates.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 464, Eff. June 1, 2001;—Am. 2012, Act 210, Eff. Oct. 1, 2012;—Am. 2013, Act 157, Eff. Feb. 3, 2014.

Popular name: EPIC

700.5306 Court appointment of guardian of incapacitated person; findings; appointment of limited guardian; effect of patient advocate designation.

Sec. 5306. (1) The court may appoint a guardian if the court finds by clear and convincing evidence both that the individual for whom a guardian is sought is an incapacitated individual and that the appointment is necessary as a means of providing continuing care and supervision of the incapacitated individual, with each finding supported separately on the record. Alternately, the court may dismiss the proceeding or enter another appropriate order.

(2) The court shall grant a guardian only those powers and only for that period of time as is necessary to provide for the demonstrated need of the incapacitated individual. The court shall design the guardianship to encourage the development of maximum self-reliance and independence in the individual. If the court is aware that an individual has executed a patient advocate designation under section 5506, the court shall not grant a guardian any of the same powers that are held by the patient advocate. A court order establishing a guardianship shall specify any limitations on the guardian's powers and any time limits on the guardianship.

(3) If the court finds by clear and convincing evidence that an individual is incapacitated and lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself, the court may appoint a limited guardian to provide guardianship services to the individual, but the court shall not appoint a full guardian.

(4) If the court finds by clear and convincing evidence that the individual is incapacitated and is totally without capacity to care for himself or herself, the court shall specify that finding of fact in an order and may appoint a full guardian.

(5) If an individual executed a patient advocate designation under section 5506 before the time the court

determines that he or she became a legally incapacitated individual, a guardian does not have and shall not exercise the power or duty of making medical or mental health treatment decisions that the patient advocate is designated to make. If, however, a petition for guardianship or for modification under section 5310 alleges and the court finds that the patient advocate designation was not executed in compliance with section 5506, that the patient advocate is not complying with the terms of the designation or with the applicable provisions of sections 5506 to 5515, or that the patient advocate is not acting consistent with the ward's best interests, the court may modify the guardianship's terms to grant those powers to the guardian.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 312, Eff. Jan. 1, 2001;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005.

Popular name: EPIC

700.5306a Rights of individual for whom guardian is sought or appointed; form.

Sec. 5306a. (1) An individual for whom a guardian is sought or has been appointed under section 5306 has all of the following rights:

(a) To object to the appointment of a successor guardian by will or other writing, as provided in section 5301.

(b) To have the guardianship proceeding commenced and conducted in the place where the individual resides or is present or, if the individual is admitted to an institution by a court, in the county in which the court is located, as provided in section 5302.

(c) To petition on his or her own behalf for the appointment of a guardian, as provided in section 5303.

(d) To have legal counsel of his or her own choice represent him or her on the petition to appoint a guardian, as provided in sections 5303, 5304, and 5305.

(e) If he or she is not represented by legal counsel, to the appointment of a guardian ad litem to represent the individual on the petition to appoint a guardian, as provided in section 5303.

(f) To an independent evaluation of his or her capacity by a physician or mental health professional, at public expense if he or she is indigent, as provided in section 5304.

(g) To be present at the hearing on the petition to appoint a guardian and to have all practical steps taken to ensure this, including, if necessary, moving the hearing site, as provided by section 5304.

(h) To see or hear all the evidence presented in the hearing on the petition to appoint a guardian, as provided in section 5304.

(i) To present evidence and cross-examine witnesses in the hearing on the petition to appoint a guardian, as provided in section 5304.

(j) To a trial by jury on the petition to appoint a guardian, as provided in section 5304.

(k) To a closed hearing on the petition to appoint a guardian, as provided in section 5304.

(l) If a guardian ad litem is appointed, to be personally visited by the guardian ad litem, as provided in section 5305.

(m) If a guardian ad litem is appointed, to an explanation by the guardian ad litem of the nature, purpose, and legal effects of a guardian's appointment, as provided in section 5305.

(n) If a guardian ad litem is appointed, to an explanation by the guardian ad litem of the individual's rights in the hearing procedure, as provided in section 5305.

(o) If a guardian ad litem is appointed, to be informed by the guardian ad litem of the right to contest the petition, to request limits on the guardian's powers, to object to a particular person being appointed guardian, to be present at the hearing, to be represented by legal counsel, and to have legal counsel appointed if the individual is unable to afford legal counsel, as provided in section 5305.

(p) To be informed of the name of each person known to be seeking appointment as guardian, including, if a guardian ad litem is appointed, to be informed of the names by the guardian ad litem as provided in section 5305.

(q) To require that proof of incapacity and the need for a guardian be proven by clear and convincing evidence, as provided in section 5306.

(r) To the limitation of the powers and period of time of a guardianship to only the amount and time that is necessary, as provided in section 5306.

(s) To a guardianship designed to encourage the development of maximum self-reliance and independence as provided in section 5306.

(t) To prevent the grant of powers to a guardian if those powers are already held by a valid patient advocate, as provided in section 5306.

(u) To periodic review of the guardianship by the court, including the right to a hearing and the appointment of an attorney if issues arise upon the review of the guardianship, as provided in section 5309.

(v) To, at any time, seek modification or termination of the guardianship by informal letter to the judge, as provided in section 5310.

(w) To a hearing within 28 days of requesting a review, modification, or termination of the guardianship, as provided in section 5310.

(x) To the same rights on a petition for modification or termination of the guardianship including the appointment of a visitor as apply to a petition for appointment of a guardian, as provided in section 5310.

(y) To personal notice of a petition for appointment or removal of a guardian, as provided in section 5311.

(z) To written notice of the nature, purpose, and legal effects of the appointment of a guardian, as provided in section 5311.

(aa) To choose the person who will serve as guardian, if the chosen person is suitable and willing to serve, as provided in section 5313.

(bb) To consult with the guardian about major decisions affecting the individual, if meaningful conversation is possible, as provided in section 5314.

(cc) To quarterly visits by the guardian, as provided in section 5314.

(dd) To have the guardian notify the court within 14 days of a change in the individual's residence, as provided in section 5314.

(ee) To have the guardian secure services to restore the individual to the best possible state of mental and physical well-being so that the individual can return to self-management at the earliest possible time, as provided in section 5314.

(ff) To have the guardian take reasonable care of the individual's clothing, furniture, vehicles, and other personal effects, as provided in section 5314.

(2) A guardian ad litem shall inform the ward in writing of his or her rights enumerated in this section. The state court administrative office and the office of services to the aging created in section 5 of the older Michiganians act, 1981 PA 180, MCL 400.585, shall promulgate a form to be used to give the written notice under this section, which shall include space for the court to include information on how to contact the court or other relevant personnel with respect to the rights enumerated in this section.

History: Add. 2012, Act 173, Eff. Oct. 1, 2012.

Popular name: EPIC

700.5307 Jurisdiction over guardian.

Sec. 5307. By accepting appointment, a guardian personally submits to the court's jurisdiction in a proceeding relating to the guardianship that may be instituted by an interested person. Notice of a proceeding shall be delivered to the guardian or mailed to the guardian by first-class mail at the guardian's address as listed in the court records and to his or her address as then known to the petitioner.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5308 Termination of guardian's authority and responsibility.

Sec. 5308. The guardian's authority and responsibility for a legally incapacitated individual terminates upon the death of the guardian or ward, upon the determination of incapacity of the guardian, or upon removal or resignation as provided in section 5310. Testamentary appointment of a guardian under an unprobated will or a will informally probated under article III terminates if the will is later denied probate in a formal testacy proceeding.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005.

Popular name: EPIC

700.5309 Review of guardianship.

Sec. 5309. The court shall review a guardianship not later than 1 year after the guardian's appointment and not later than every 3 years after each review.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5310 Resignation or removal of guardian.

Sec. 5310. (1) On petition of the guardian and subject to the filing and approval of a report prepared as required by section 5314, the court shall accept the guardian's resignation and make any other order that is appropriate.

(2) The ward or a person interested in the ward's welfare may petition for an order removing the guardian, appointing a successor guardian, modifying the guardianship's terms, or terminating the guardianship. A request for this order may be made by informal letter to the court or judge. A person who knowingly interferes with the transmission of this kind of request to the court or judge is subject to a finding of contempt.

of court.

(3) Except as otherwise provided in the order finding incapacity, upon receiving a petition or request under this section, the court shall set a date for a hearing to be held within 28 days after the receipt of the petition or request. An order finding incapacity may specify a minimum period, not exceeding 182 days, during which a petition or request for a finding that a ward is no longer an incapacitated individual, or for an order removing the guardian, modifying the guardianship's terms, or terminating the guardianship, shall not be filed without special leave of the court.

(4) Before removing a guardian, appointing a successor guardian, modifying the guardianship's terms, or terminating a guardianship, and following the same procedures to safeguard the ward's rights as apply to a petition for a guardian's appointment, the court may send a visitor to the present guardian's residence and to the place where the ward resides or is detained to observe conditions and report in writing to the court.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5311 Appointment or removal of guardian; notice of hearing.

Sec. 5311. (1) In a proceeding for the appointment or removal of an incapacitated individual's guardian, other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing must be given to each of the following:

(a) The ward or the individual alleged to be incapacitated and that individual's spouse, parents, and adult children.

(b) A person who is serving as the guardian or conservator or who has the individual's care and custody.

(c) If known, a person named as attorney in fact under a durable power of attorney.

(d) If no other person is notified under subdivision (a), (b), or (c), at least 1 of the individual's closest adult relatives, if any can be found.

(2) Notice must be served personally on the alleged incapacitated individual. Notice to all other persons must be given as prescribed by court rule. Waiver of notice by the individual alleged to be incapacitated is not effective unless the individual attends the hearing or a waiver of notice is confirmed in an interview with the visitor.

(3) In a proceeding for a guardian's appointment under sections 5303 and 5304, a copy of the petition must be attached to the hearing notice, and the notice to the alleged incapacitated individual must contain all of the following information:

(a) The nature, purpose, and legal effects of the appointment of a guardian.

(b) The alleged incapacitated individual's rights in the proceeding, including the right to appointed legal counsel.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5312 Court exercise of power of guardian; temporary guardian.

Sec. 5312. (1) If an individual does not have a guardian, an emergency exists, and no other person appears to have authority to act in the circumstances, the court shall provide notice to the individual alleged to be incapacitated and shall hold a hearing. Upon a showing that the individual is an incapacitated individual, the court may exercise the power of a guardian, or appoint a temporary guardian with only the powers and for the period of time as ordered by the court. A hearing with notice as provided in section 5311 shall be held within 28 days after the court has acted under this subsection.

(2) If an appointed guardian is not effectively performing the guardian's duties and the court further finds that the legally incapacitated individual's welfare requires immediate action, the court may appoint, with or without notice, a temporary guardian for the legally incapacitated individual for a specified period not to exceed 6 months.

(3) A temporary guardian is entitled to the care and custody of the ward, and the authority of a permanent guardian previously appointed by the court is suspended as long as a temporary guardian has authority. A temporary guardian may be removed at any time. A temporary guardian shall make reports as the court requires. In other respects, the provisions of this act concerning guardians apply to temporary guardians.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5313 Guardian; qualifications.

Sec. 5313. (1) The court may appoint a competent person as guardian of a legally incapacitated individual. The court shall not appoint as a guardian an agency, public or private, that financially benefits from directly

providing housing, medical, mental health, or social services to the legally incapacitated individual. If the court determines that the ward's property needs protection, the court shall order the guardian to furnish a bond or shall include restrictions in the letters of guardianship as necessary to protect the property.

(2) In appointing a guardian under this section, the court shall appoint a person, if suitable and willing to serve, in the following order of priority:

(a) A person previously appointed, qualified, and serving in good standing as guardian for the legally incapacitated individual in another state.

(b) A person the individual subject to the petition chooses to serve as guardian.

(c) A person nominated as guardian in a durable power of attorney or other writing by the individual subject to the petition.

(d) A person named by the individual as a patient advocate or attorney in fact in a durable power of attorney.

(3) If there is no person chosen, nominated, or named under subsection (2), or if none of the persons listed in subsection (2) are suitable or willing to serve, the court may appoint as a guardian an individual who is related to the individual who is the subject of the petition in the following order of preference:

(a) The legally incapacitated individual's spouse. This subdivision shall be considered to include a person nominated by will or other writing signed by a deceased spouse.

(b) An adult child of the legally incapacitated individual.

(c) A parent of the legally incapacitated individual. This subdivision shall be considered to include a person nominated by will or other writing signed by a deceased parent.

(d) A relative of the legally incapacitated individual with whom the individual has resided for more than 6 months before the filing of the petition.

(e) A person nominated by a person who is caring for the legally incapacitated individual or paying benefits to the legally incapacitated individual.

(4) If none of the persons as designated or listed in subsection (2) or (3) are suitable or willing to serve, the court may appoint any competent person who is suitable and willing to serve, including a professional guardian as provided in section 5106.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2000, Act 312, Eff. Jan. 1, 2001;—Am. 2000, Act 463, Eff. June 1, 2001;—Am. 2012, Act 545, Imd. Eff. Jan. 2, 2013.

Popular name: EPIC

700.5314 Powers and duties of guardian.

Sec. 5314. Whenever meaningful communication is possible, a legally incapacitated individual's guardian shall consult with the legally incapacitated individual before making a major decision affecting the legally incapacitated individual. To the extent a guardian of a legally incapacitated individual is granted powers by the court under section 5306, the guardian is responsible for the ward's care, custody, and control, but is not liable to third persons by reason of that responsibility for the ward's acts. In particular and without qualifying the previous sentences, a guardian has all of the following powers and duties, to the extent granted by court order:

(a) The custody of the person of the ward and the power to establish the ward's place of residence within or without this state. The guardian shall visit the ward within 3 months after the guardian's appointment and not less than once within 3 months after each previous visit. The guardian shall notify the court within 14 days of a change in the ward's place of residence or a change in the guardian's place of residence.

(b) If entitled to custody of the ward, the duty to make provision for the ward's care, comfort, and maintenance and, when appropriate, arrange for the ward's training and education. The guardian shall secure services to restore the ward to the best possible state of mental and physical well-being so that the ward can return to self-management at the earliest possible time. Without regard to custodial rights of the ward's person, the guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and commence a protective proceeding if the ward's other property needs protection. If a guardian commences a protective proceeding because the guardian believes that it is in the ward's best interest to sell or otherwise dispose of the ward's real property or interest in real property, the court may appoint the guardian as special conservator and authorize the special conservator to proceed under section 5423(3). A guardian shall not otherwise sell the ward's real property or interest in real property.

(c) The power to give the consent or approval that is necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service. The power of a guardian to execute a do-not-resuscitate order under subdivision (d) does not affect or limit the power of a guardian to consent to a physician's order to withhold resuscitative measures in a hospital.

(d) The power of a guardian to execute, reaffirm, and revoke a do-not-resuscitate order on behalf of a ward

is subject to this subdivision. A guardian shall not execute a do-not-resuscitate order unless the guardian does all of the following:

(i) Not more than 14 days before executing the do-not-resuscitate order, the guardian visits the ward and, if meaningful communication is possible, consults with the ward about executing the do-not-resuscitate order.

(ii) The guardian consults directly with the ward's attending physician as to the specific medical indications that warrant the do-not-resuscitate order.

(e) If a guardian executes a do-not-resuscitate order under subdivision (d), not less than annually after the do-not-resuscitate order is first executed, the guardian shall do all of the following:

(i) Visit the ward and, if meaningful communication is possible, consult with the ward about reaffirming the do-not-resuscitate order.

(ii) Consult directly with the ward's attending physician as to specific medical indications that may warrant reaffirming the do-not-resuscitate order.

(f) If a conservator for the ward's estate is not appointed, the power to do any of the following:

(i) Institute a proceeding to compel a person under a duty to support the ward or to pay money for the ward's welfare to perform that duty.

(ii) Receive money and tangible property deliverable to the ward and apply the money and property for the ward's support, care, and education. The guardian shall not use money from the ward's estate for room and board that the guardian or the guardian's spouse, parent, or child have furnished the ward unless a charge for the service is approved by court order made upon notice to at least 1 of the ward's next of kin, if notice is possible. The guardian shall exercise care to conserve any excess for the ward's needs.

(g) The guardian shall report the condition of the ward and the ward's estate that is subject to the guardian's possession or control, as required by the court, but not less often than annually. The guardian shall also serve the report required under this subdivision on the ward and interested persons as specified in the Michigan court rules. A report under this subdivision shall contain all of the following:

(i) The ward's current mental, physical, and social condition.

(ii) Improvement or deterioration in the ward's mental, physical, and social condition that occurred during the past year.

(iii) The ward's present living arrangement and changes in his or her living arrangement that occurred during the past year.

(iv) Whether the guardian recommends a more suitable living arrangement for the ward.

(v) Medical treatment received by the ward.

(vi) Whether the guardian has executed, reaffirmed, or revoked a do-not-resuscitate order on behalf of the ward during the past year.

(vii) Services received by the ward.

(viii) A list of the guardian's visits with, and activities on behalf of, the ward.

(ix) A recommendation as to the need for continued guardianship.

(h) If a conservator is appointed, the duty to pay to the conservator, for management as provided in this act, the amount of the ward's estate received by the guardian in excess of the amount the guardian expends for the ward's current support, care, and education. The guardian shall account to the conservator for the amount expended.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2000, Act 313, Eff. Jan. 1, 2001;—Am. 2000, Act 467, Eff. June 1, 2001;—Am. 2000, Act 469, Eff. June 1, 2001;—Am. 2012, Act 173, Eff. Oct. 1, 2012;—Am. 2013, Act 157, Eff. Feb. 3, 2014.

Popular name: EPIC

700.5315 Payments for care of ward; claims at death.

Sec. 5315. (1) To the extent granted by the court under section 5306, the guardian of an individual for whom a conservator also is appointed controls the ward's custody and care and is entitled to receive reasonable amounts for those services and for room and board furnished to the ward as agreed upon between the guardian and the conservator if the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to a third person or institution for the ward's care and maintenance.

(2) If a ward dies while under guardianship and a conservator has not been appointed for the ward's estate and if the guardian has possession of money of the deceased ward, upon petition of the guardian and with or without notice, the court may hear a claim for burial expenses or any other claim as the court considers advisable. Upon hearing the claim, the court may enter an order allowing or disallowing the claim or a part of the claim and may provide in the order of allowance that the claim or a part of it be paid immediately if the payment can be made without injury or serious inconvenience to the ward's estate.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2012, Act 173, Eff. Oct. 1, 2012.

Popular name: EPIC

700.5316 Partial management of property by ward.

Sec. 5316. To encourage self-reliance and independence in a legally incapacitated individual, the court may authorize the individual to function without the consent or supervision of the individual's guardian or conservator in handling part of his or her money or property, including authorizing the individual to maintain an account with a financial institution. To the extent the individual is authorized to function autonomously, a person may deal with the individual as though the individual is mentally competent.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5317 Guardianship proceedings; concurrent jurisdiction.

Sec. 5317. (1) The court in the county where the ward resides has concurrent jurisdiction over resignation, removal, accounting, and other proceedings relating to the guardianship with the court that appointed the guardian or in which acceptance of a parental or spousal appointment was filed.

(2) If the court in the county where the ward resides is not the court in which acceptance of appointment is filed, the court in which a proceeding is commenced after the appointment in appropriate cases shall notify the other court, in this or another state, and after consultation with that court, shall determine whether to retain jurisdiction or transfer the proceeding to the other court, whichever is in the best interests of the ward. After this determination is made, the court accepting a resignation or removing a guardian shall direct this fiduciary to prepare and submit a final report to both courts. A copy of an order accepting a resignation or removing a guardian and a copy of the final report must be sent to the court in which acceptance of appointment is filed. The court entering this order may permit closing of the guardianship in the court in which acceptance of appointment is filed, without notice to interested persons.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5318 Third person dealing with guardian.

Sec. 5318. If a third person is dealing with a guardian or is assisting a guardian in the conduct of a transaction, the third person may assume the existence of trust powers and their proper exercise by the guardian without inquiry. The third person is not bound to inquire whether the guardian may act or is properly exercising the power. Unless the third person has actual knowledge that the guardian is exceeding the guardian's powers or improperly exercising them, a third person is fully protected in dealing with the guardian as if the guardian possessed and properly exercised the powers the guardian purports to exercise. A third person is not bound to assume the proper application of estate assets paid or delivered to the guardian. This section does not apply to a third person dealing with a limited guardian.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5319 Appointment of conservator or protective order; report of amount of additional cash or property.

Sec. 5319. (1) If the court determines that financial protection is required for the ward, the court may order the guardian to petition for the appointment of a conservator or for another protective order under part 4 of this article in relation to the ward's estate.

(2) If a conservator has not been appointed for a ward's estate and the guardian determines that there is more cash or property that is readily convertible into cash in the ward's estate than was estimated by the guardian ad litem and reported to the court, the guardian shall report the amount of the additional cash or property to the court.

History: Add. 2012, Act 173, Eff. Oct. 1, 2012.

Popular name: EPIC

PART 4

PROTECTION OF PROPERTY OF AN INDIVIDUAL UNDER DISABILITY OR OF A MINOR

700.5401 Protective proceedings.

Sec. 5401. (1) Upon petition and after notice and hearing in accordance with this part, the court may appoint a conservator or make another protective order for cause as provided in this section.

(2) The court may appoint a conservator or make another protective order in relation to a minor's estate and affairs if the court determines that the minor owns money or property that requires management or protection that cannot otherwise be provided, has or may have business affairs that may be jeopardized or prevented by minority, or needs money for support and education and that protection is necessary or desirable to obtain or provide money.

(3) The court may appoint a conservator or make another protective order in relation to an individual's estate and affairs if the court determines both of the following:

(a) The individual is unable to manage property and business affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance.

(b) The individual has property that will be wasted or dissipated unless proper management is provided, or money is needed for the individual's support, care, and welfare or for those entitled to the individual's support, and that protection is necessary to obtain or provide money.

(4) The court may appoint a conservator in relation to the estate and affairs of an individual who is mentally competent, but due to age or physical infirmity is unable to manage his or her property and affairs effectively and who, recognizing this disability, requests a conservator's appointment.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 466, Eff. June 1, 2001.

Popular name: EPIC

700.5402 Protective proceedings; jurisdiction.

Sec. 5402. After the service of notice in a proceeding seeking a conservator's appointment or other protective order and until the proceeding's termination, the court in which the petition is filed has the following jurisdiction:

(a) Exclusive jurisdiction to determine the need for a conservator or other protective order until the proceeding is terminated.

(b) Exclusive jurisdiction to determine how the protected individual's estate that is subject to the laws of this state is managed, expended, or distributed to or for the use of the protected individual or any of the protected individual's dependents or other claimants.

(c) Concurrent jurisdiction to determine the validity of a claim against the protected individual or the protected individual's estate, and questions of title concerning estate property.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5403 Venue.

Sec. 5403. Venue for a proceeding under this part is as follows:

(a) In the court at the place in this state where the individual to be protected resides whether or not a guardian has been appointed in another place.

(b) If the individual to be protected does not reside in this state, in the court at a place where property of the individual is located.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5404 Original petition for appointment or protective order.

Sec. 5404. (1) The individual to be protected, a person who is interested in the individual's estate, affairs, or welfare, including a parent, guardian, or custodian, or a person who would be adversely affected by lack of effective management of the individual's property and business affairs may petition for a conservator's appointment or for another appropriate protective order.

(2) The petition must set forth to the extent known the petitioner's interest; the name, age, residence, and address of the individual to be protected; the name and address of the guardian, if any; the name and address of the nearest relative known to the petitioner; a general statement of the individual's property with an estimate of the value of the property, including compensation, insurance, a pension, or an allowance to which the individual is entitled; and the reason why a conservator's appointment or another protective order is necessary. If a conservator's appointment is requested, the petition shall also set forth the name and address of the person whose appointment is sought and the basis of the claim to priority for appointment.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5405 Notice.

Sec. 5405. (1) On a petition for a conservator's appointment or another protective order, the requirements for notice described in section 5311 apply, subject to the following:

(a) If the individual to be protected has disappeared or is otherwise situated so as to make personal service of notice impracticable, notice to the individual shall be given by mail or publication as provided in section 1401.

(b) If the individual to be protected is a minor, section 5213(1) also applies.

(2) Notice of a hearing on a petition for an order after a conservator's appointment or another protective order must be given to the protected individual, a conservator of the protected individual's estate, and any other person as ordered by the court or as provided by court rule.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5406 Procedure concerning hearing and order on original petition.

Sec. 5406. (1) Upon receipt of a petition for a conservator's appointment or another protective order because of minority, the court shall set a date for hearing. If, at any time in the proceeding, the court determines that the minor's interests are or may be inadequately represented, the court may appoint an attorney to represent the minor, giving consideration to the minor's choice if 14 years of age or older. An attorney appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

(2) Upon receipt of a petition for a conservator's appointment or another protective order for a reason other than minority, the court shall set a date for hearing. Unless the individual to be protected has chosen counsel, or is mentally competent but aged or physically infirm, the court shall appoint a guardian ad litem to represent the person in the proceeding. If the alleged disability is mental illness, mental deficiency, physical illness or disability, chronic use of drugs, or chronic intoxication, the court may direct that the individual alleged to need protection be examined by a physician or mental health professional appointed by the court, preferably a physician or mental health professional who is not connected with an institution in which the individual is a patient or is detained. The individual alleged to need protection has the right to secure an independent evaluation at his or her own expense. The court may send a visitor to interview the individual to be protected. The visitor may be a guardian ad litem or a court officer or employee.

(3) The court may utilize, as an additional visitor, the service of a public or charitable agency to evaluate the condition of the individual to be protected and make appropriate recommendations to the court.

(4) A guardian ad litem, physician, mental health professional, or visitor appointed under this section who meets with, examines, or evaluates an individual who is the subject of a petition in a protective proceeding shall do all of the following:

(a) Consider whether there is an appropriate alternative to a conservatorship.

(b) If a conservatorship is appropriate, consider the desirability of limiting the scope and duration of the conservator's authority.

(c) Report to the court based on the considerations required in subdivisions (a) and (b).

(5) The individual to be protected is entitled to be present at the hearing in person. If the individual wishes to be present at the hearing, all practical steps must be taken to ensure the individual's presence including, if necessary, moving the site of the hearing. The individual is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including a court-appointed physician or other qualified person and a visitor, and to trial by jury. The issue may be determined at a closed hearing or without a jury if the individual to be protected or counsel for the individual so requests.

(6) Any person may request for permission to participate in the proceeding, and the court may grant the request, with or without hearing, upon determining that the best interest of the individual to be protected will be served by granting the request. The court may attach appropriate conditions to the permission.

(7) After hearing, upon finding that a basis for a conservator's appointment or another protective order is established by clear and convincing evidence, the court shall make the appointment or other appropriate protective order.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2000, Act 464, Eff. June 1, 2001.

Popular name: EPIC

700.5407 Permissible court orders.

Sec. 5407. (1) The court shall exercise the authority conferred in this part to encourage the development of maximum self-reliance and independence of a protected individual and shall make protective orders only to the extent necessitated by the protected individual's mental and adaptive limitations and other conditions warranting the procedure. Accordingly, the court may authorize a protected individual to function without the consent or supervision of the individual's conservator in handling part of his or her money or property,

including authorizing the individual to maintain an account with a financial institution. To the extent the individual is authorized to function autonomously, a person may deal with the individual as though the individual is mentally competent.

(2) The court has the following powers that may be exercised directly or through a conservator in respect to a protected individual's estate and business affairs:

(a) While a petition for a conservator's appointment or another protective order is pending and after preliminary hearing and without notice to others, the court has the power to preserve and apply property of the individual to be protected as may be required for the support of the individual or the individual's dependents.

(b) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the minor's estate and business affairs that are or may be necessary for the best interests of the minor and members of the minor's immediate family.

(c) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to an individual for a reason other than minority, the court, for the benefit of the individual and members of the individual's immediate family, has all the powers over the estate and business affairs that the individual could exercise if present and not under disability, except the power to make a will. Those powers include, but are not limited to, all of the following:

(i) To make gifts.

(ii) To convey or release a contingent or expectant interest in property including marital property rights and a right of survivorship incident to joint tenancy or tenancy by the entirety.

(iii) To exercise or release a power held by the protected individual as personal representative, custodian for a minor, conservator, or donee of a power of appointment.

(iv) To enter into a contract.

(v) To create a revocable or irrevocable trust of estate property that may extend beyond the disability or life of the protected individual.

(vi) To exercise an option of the protected individual to purchase securities or other property.

(vii) To exercise a right to elect an option and change a beneficiary under an insurance or annuity policy and to surrender the policy for its cash value.

(viii) To exercise a right to an elective share in the estate of the individual's deceased spouse.

(ix) To renounce or disclaim an interest by testate or intestate succession or by inter vivos transfer.

(3) The court may exercise or direct the exercise of the following powers only if satisfied, after the notice and hearing, that it is in the protected individual's best interests and that the individual either is incapable of consenting or has consented to the proposed exercise of the power:

(a) To exercise or release a power of appointment of which the protected individual is donee.

(b) To renounce or disclaim an interest.

(c) To make a gift in trust or otherwise exceeding 20% of a year's income of the estate.

(d) To change a beneficiary under an insurance and annuity policy.

(4) A determination that a basis for a conservator's appointment or another protective order exists has no effect on the protected individual's capacity.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

Popular name: EPIC

700.5408 Protective arrangements and single transactions authorized.

Sec. 5408. (1) If it is established in a proper proceeding that a basis exists as described in section 5401 for affecting an individual's property and business affairs, the court, without appointing a conservator, may authorize, direct, or ratify a transaction necessary or desirable to achieve a security, service, or care arrangement meeting the protected individual's foreseeable needs. Protective arrangements include, but are not limited to, payment, delivery, deposit, or retention of money or property; sale, mortgage, lease, or other transfer of property; entry into an annuity contract, contract for life care, deposit contract, or contract for training and education; or an addition to or establishment of a suitable trust.

(2) If it is established in a proper proceeding that a basis exists as described in section 5401 for affecting an individual's property and business affairs, the court, without appointing a conservator, may authorize, direct, or ratify a contract, trust, or other transaction relating to the protected individual's property and business affairs if the court determines that the transaction is in the protected individual's best interests.

(3) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of the protected individual's creditors and dependents and, in view of the disability, whether the protected individual needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of a protective arrangement or other transaction

authorized under this section. The special conservator has the authority conferred by the order and serves until discharged by order after reporting to the court on all matters done under the appointment order.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5409 Appointment of conservator.

Sec. 5409. (1) The court may appoint an individual, a corporation authorized to exercise fiduciary powers, or a professional conservator described in section 5106 to serve as conservator of a protected individual's estate. The following are entitled to consideration for appointment in the following order of priority:

(a) A conservator, guardian of property, or similar fiduciary appointed or recognized by the appropriate court of another jurisdiction in which the protected individual resides.

(b) An individual or corporation nominated by the protected individual if he or she is 14 years of age or older and of sufficient mental capacity to make an intelligent choice, including a nomination made in a durable power of attorney.

(c) The protected individual's spouse.

(d) An adult child of the protected individual.

(e) A parent of the protected individual or a person nominated by the will of a deceased parent.

(f) A relative of the protected individual with whom he or she has resided for more than 6 months before the petition is filed.

(g) A person nominated by the person who is caring for or paying benefits to the protected individual.

(h) If none of the persons listed in subdivisions (a) to (g) are suitable and willing to serve, any person that the court determines is suitable and willing to serve.

(2) A person named in subsection (1)(a), (c), (d), (e), or (f) may designate in writing a substitute to serve instead, and that designation transfers the priority to the substitute. If persons have equal priority, the court shall select the person the court considers best qualified to serve. Acting in the protected individual's best interest, the court may pass over a person having priority and appoint a person having a lower priority or no priority.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 463, Eff. June 1, 2001.

Popular name: EPIC

700.5410 Bond.

Sec. 5410. (1) The court may require a conservator to furnish a bond. If the court determines that the value of cash and property that is readily convertible into cash in the estate and in the conservator's control exceeds the limit for administering a decedent's estate under section 3982, adjusted in the manner provided under section 1210 for the year in which the conservator is appointed, the court shall require the conservator to furnish a bond, unless 1 or more of the following apply:

(a) The estate contains no property readily convertible to cash and the cash is in a restricted account with a financial institution.

(b) The conservator has been granted trust powers under section 4401 of the banking code of 1999, 1999 PA 276, MCL 487.14401.

(c) The court determines that requiring a bond would impose a financial hardship on the estate.

(d) The court states on the record the reasons why a bond is not necessary.

(2) A bond furnished under this section shall be conditioned upon faithful discharge of all duties of the conservator's trust according to law, with sureties as the court specifies. Unless otherwise directed, the bond shall be in the amount of the aggregate capital value of the estate property in the conservator's control plus 1 year's estimated income minus the value of securities deposited under arrangements requiring a court order for their removal and the value of land that the fiduciary, by express limitation of power, lacks power to sell or convey without court authorization. Instead of sureties on a bond, the court may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2012, Act 173, Eff. Oct. 1, 2012.

Popular name: EPIC

700.5411 Terms and requirements of bonds.

Sec. 5411. (1) The following requirements and provisions apply to a bond required under section 5410:

(a) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the conservator and with each other.

(b) By executing an approved bond of a conservator, a surety consents to the jurisdiction of the court that issued letters to the primary obligor in a proceeding pertaining to the conservator's fiduciary duties and

naming the surety as a party respondent. Notice of a proceeding must be delivered to the surety or mailed by registered or certified mail to the address listed with the court where the bond is filed and to the address as then known to the petitioner.

(c) On petition of a successor conservator or an interested person, a proceeding may be initiated against a surety for breach of the obligation of the conservator's bond.

(d) The conservator's bond is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(2) A proceeding shall not be commenced against a surety on a matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5412 Qualification; limitation and procedure with regard to specified assets; consent to jurisdiction.

Sec. 5412. (1) Before receiving letters, a conservator must qualify by filing with the appointing court a required bond and a statement of acceptance of the duties of the office.

(2) In filing the statement of acceptance, the conservator may exclude from the scope of the conservator's responsibility, for a period not exceeding 91 days, real estate or an ownership interest in a business entity if the conservator reasonably believes the real estate or property owned by the business entity is or may be contaminated by a hazardous substance, or is or has been used for an activity directly or indirectly involving a hazardous substance that could result in liability to the estate or otherwise impair the value of property held in the estate. The conservator shall identify the real estate or ownership interest being excluded and specify the time period of exclusion.

(3) If the conservator identifies excluded property under subsection (2), the conservator's responsibilities extend to the excluded property at the end of the exclusion period or upon prior notice of acceptance of that property filed by the conservator with the court, unless, before the end of the exclusion period, the conservator requests the court to appoint a special conservator with respect to the excluded property or to exercise administrative authority over the excluded property by direct judicial order.

(4) In response to a request by the general conservator under subsection (3), the court may do either of the following:

(a) Appoint a special conservator with the duty and authority to collect and manage the excluded property, but only to the extent necessary for proper settlement of the estate, to preserve the property, to account with respect to the property, and to distribute or otherwise dispose of the property as directed by the general conservator or other court order.

(b) Direct administration of the excluded property by judicial order without the appointment of a conservator with respect to the property.

(5) By accepting appointment, a conservator submits personally to the court's jurisdiction in a proceeding relating to the estate that may be instituted by an interested person. Notice of a proceeding shall be delivered to the conservator or mailed by registered or certified mail to the address listed in the petition for appointment or as reported to the court after appointment and to the address as then known to the petitioner.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5413 Compensation and expenses.

Sec. 5413. If not otherwise compensated for services rendered, a visitor, guardian ad litem, attorney, physician, conservator, or special conservator appointed in a protective proceeding, is entitled to reasonable compensation from the estate.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5414 Death, resignation, or removal of conservator.

Sec. 5414. The court may remove a conservator for good cause, upon notice and hearing, or accept a conservator's resignation. Upon the conservator's death, resignation, or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of the predecessor.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5415 Petitions for orders subsequent to appointment.

Sec. 5415. (1) A person interested in the welfare of an individual for whom a conservator is appointed may file a petition in the appointing court for an order to do any of the following:

- (a) Require bond or security or additional bond or security, or reduce bond.
- (b) Require an accounting for the administration of the trust.
- (c) Direct distribution.
- (d) Remove the conservator and appoint a temporary or successor conservator.
- (e) Grant other appropriate relief.

(2) A conservator may petition the appointing court for instructions concerning fiduciary responsibility. Upon notice and hearing, the court may give appropriate instructions or make an appropriate order.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5416 General duty of conservator.

Sec. 5416. In relation to powers conferred by this part or implicit in the title acquired by virtue of the proceeding, a conservator shall act as a fiduciary and observe the standard of care applicable to a trustee.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5417 Inventory and records.

Sec. 5417. (1) Within 56 days after appointment or within another time period specified by court rule, a conservator shall prepare and file with the appointing court a complete inventory of the estate subject to the conservatorship together with an oath or affirmation that the inventory is believed to be complete and accurate so far as information permits. The conservator shall provide a copy of the inventory to the protected individual if the individual can be located and is 14 years of age or older and to interested persons as specified in the Michigan court rules.

(2) The conservator must keep suitable records of the administration and exhibit those records on the request of an interested person.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 312, Eff. Jan. 1, 2001.

Popular name: EPIC

700.5418 Accounts.

Sec. 5418. (1) A conservator shall account to the court for administration of the trust not less than annually unless the court directs otherwise, upon resignation or removal, and at other times as the court directs. On termination of the protected individual's minority or disability, a conservator shall account to the court or to the formerly protected individual or that individual's successors. Subject to appeal or vacation within the time permitted, an order, after notice and hearing, allowing an intermediate account of a conservator adjudicates as to liabilities concerning the matters considered in connection with the accounts, and an order, after notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected individual or the protected individual's successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate to be made in any manner the court specifies.

(2) The conservator shall provide a copy of an account to the protected individual if the individual can be located and is 14 years of age or older and to interested persons as specified in the Michigan court rules.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 312, Eff. Jan. 1, 2001.

Popular name: EPIC

700.5419 Conservators; title by appointment.

Sec. 5419. (1) Appointment of a conservator vests in the conservator title as trustee to all of the protected individual's property, or to the part of that property specified in the order, held at the time of or acquired after the order, including title to property held for the protected individual by a custodian or attorney-in-fact. An order specifying that only a part of the protected individual's property vests in the conservator creates a limited conservatorship.

(2) Except as otherwise provided in this act, the protected individual's interest in property vested in a conservator by this section is not transferable or assignable by the protected individual. Though ineffective to affect property rights, an attempted transfer or assignment by the protected individual may generate a claim for restitution or damages that, subject to presentation and allowance, may be satisfied as provided in section 5429.

(3) Property vested in a conservator by this section and the protected individual's interest in that property is

not subject to levy, garnishment, or similar process other than an order issued in the protective proceeding made as provided in section 5429.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5420 Recording of conservator's letters.

Sec. 5420. (1) Letters of conservatorship are evidence of transfer of all of the protected individual's property, or the part of that property specified in the letters, to the conservator. An order terminating a conservatorship is evidence of transfer of the property subjected to the conservatorship from the conservator to the protected individual or that individual's successors.

(2) Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship or an order terminating a conservatorship may be filed or recorded to give record notice of title as between the conservator and the protected individual.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5421 Sale, encumbrance, or transaction involving conflict of interest; voidable; presumption; compliance with Michigan prudent investor rule; exceptions.

Sec. 5421. (1) A sale, encumbrance, or other transaction involving the investment or management of estate property in which the conservator has a substantial beneficial interest or that is otherwise affected by a substantial conflict between the conservator's fiduciary and personal interests, is voidable unless any of the following are true:

(a) The transaction is approved by the court after notice as directed by the court.

(b) The transaction involves a contract entered into or claim acquired by the conservator before the person became or contemplated becoming conservator.

(c) The transaction is otherwise permitted by statute.

(2) A sale, encumbrance, or other transaction involving the investment or management of estate property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the conservator with any of the following:

(a) The conservator's spouse.

(b) The conservator's descendant, sibling, or parent or the spouse of the conservator's descendant, sibling, or parent.

(c) An agent or attorney of the conservator.

(d) A corporation or other person or enterprise in which the conservator, or a person that owns a significant interest in the conservator, has an interest that might affect the conservator's best judgment.

(3) A transaction not concerning estate property in which the conservator engages in the conservator's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the estate.

(4) An investment by a conservator in securities of an investment company or investment trust to which the conservator, or its affiliate, provides services in a capacity other than as conservator is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the Michigan prudent investor rule. In addition to its compensation for acting as conservator, the conservator may be compensated by the investment company or investment trust for providing those services out of fees charged to the estate. If the conservator receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the conservator shall at least annually notify the court of the rate and method by which that compensation was determined.

(5) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the conservator shall act in the best interests of the estate. If the estate is the sole owner of a corporation or other form of enterprise, the conservator shall elect or appoint directors or other managers to manage the corporation or enterprise in the best interest of the estate.

(6) This section does not preclude the following transactions, if fair to the estate:

(a) An agreement relating to the compensation of the conservator.

(b) Payment of reasonable compensation to the conservator.

(c) A transaction between the estate and another trust or conservatorship of which the conservator is a fiduciary or in which the estate or protected individual has an interest.

(d) A deposit of estate money in a financial institution operated by or affiliated with the conservator.

(e) An advance by the conservator of money for the protection of the estate.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2009, Act 46, Eff. Apr. 1, 2010.

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Popular name: EPIC

700.5422 Persons dealing with conservators; protection.

Sec. 5422. (1) A person who in good faith either assists or deals with a conservator for value in a transaction, other than a transaction that requires a court order as provided in section 5407 or 5423(3), is protected as if the conservator properly exercised the power. Except as provided in subsection (3), the fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, but a restriction on a conservator's powers that is endorsed on letters as provided in section 5427 is effective as to third persons. A person is not bound to see to the proper application of estate property paid or delivered to a conservator.

(2) The protection expressed in this section extends to a procedural irregularity or jurisdictional defect that occurs in a proceeding leading to the issuance of letters and is not a substitution for protection provided by a comparable provision of the law relating to a commercial transaction or to simplifying a transfer of securities by a fiduciary.

(3) A conservator shall record an order allowing the sale, disposal, mortgage, or pledge of or placement of a lien on real property under section 5423 in the records of the register of deeds for the county in which the real estate is located. Unless the order has been recorded or a person to whom an interest in the real estate is transferred has been given a copy of the order, the person is not entitled to presume that the conservator has the power to sell or otherwise dispose of the real property, or to mortgage, pledge, or cause a lien to be placed on the protected individual's real property, as applicable.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2012, Act 173, Eff. Oct. 1, 2012.

Popular name: EPIC

700.5423 Powers of conservator in administration.

Sec. 5423. (1) Subject to a limitation imposed under section 5427, a conservator has all of the powers conferred in this section and the additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor, as to whom no one has parental rights, has the powers, responsibilities, and duties of a guardian described in section 5215 until the individual is no longer a minor or marries. The parental rights conferred on a conservator by this section do not preclude a guardian's appointment as provided in part 2.

(2) Acting reasonably in an effort to accomplish the purpose of the appointment and without court authorization or confirmation, a conservator may do any of the following:

(a) Collect, hold, or retain estate property, including land in another state, until the conservator determines that disposition of the property should be made. Property may be retained even though it includes property in which the conservator is personally interested.

(b) Receive an addition to the estate.

(c) Continue or participate in the operation of a business or other enterprise.

(d) Acquire an undivided interest in estate property in which the conservator, in a fiduciary capacity, holds an undivided interest.

(e) Invest or reinvest estate property. If the conservator exercises the power conferred by this subdivision, the conservator must invest or reinvest the property in accordance with the Michigan prudent investor rule.

(f) Deposit estate money in a state or federally insured financial institution including one operated by the conservator.

(g) Except as provided in subsection (3), acquire or dispose of estate property, including land in another state, for cash or on credit, at public or private sale, or manage, develop, improve, exchange, partition, change the character of, or abandon estate property.

(h) Make an ordinary or extraordinary repair or alteration in a building or other structure, demolish an improvement, or raze an existing or erect a new party wall or building.

(i) Subdivide, develop, or dedicate land to public use; make or obtain the vacation of a plat or adjust a boundary; adjust a difference in valuation on exchange or partition by giving or receiving consideration; or dedicate an easement to public use without consideration.

(j) Enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship.

(k) Enter into a lease or arrangement for exploration and removal of a mineral or other natural resource or enter into a pooling or unitization agreement.

(l) Grant an option involving disposition of estate property or take an option for the acquisition of property.

(m) Vote a security, in person or by general or limited proxy.

(n) Pay a call, assessment, or other amount chargeable or accruing against or on account of a security.

- (o) Sell or exercise stock subscription or conversion rights.
- (p) Consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.
- (q) Hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery. However, the conservator is liable for an act of the nominee in connection with the stock so held.
- (r) Insure the estate property against damage or loss or the conservator against liability with respect to third persons.
- (s) Borrow money to be repaid from estate property or otherwise.
- (t) Advance money for the protection of the estate or the protected individual, and for all expense, loss, or liability sustained in the estate's administration or because of the holding or ownership of estate property. The conservator has a lien on the estate as against the protected individual for such an advance.
- (u) Pay or contest a claim; settle a claim by or against the estate or the protected individual by compromise, arbitration, or otherwise; and release, in whole or in part, a claim belonging to the estate to the extent that the claim is uncollectible.
- (v) Pay a tax, assessment, conservator's compensation, or other expense incurred in the estate's collection, care, administration, and protection.
- (w) Allocate an item of income or expense to either estate income or principal, as provided by law, including creation of a reserve out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber property.
- (x) Pay money distributable to a protected individual or the protected individual's dependent by paying the money to the distributee or by paying the money for the use of the distributee to the distributee's guardian, or if none, to a relative or other person having custody of the distributee.
- (y) Employ a person, including an auditor, investment advisor, or agent, even though the person is associated with the conservator, to advise or assist in the performance of an administrative duty; act upon the person's recommendation without independent investigation; and, instead of acting personally, employ an agent to perform an act of administration, whether or not discretionary.
- (z) Employ an attorney to perform necessary legal services or to advise or assist the conservator in the performance of the conservator's administrative duties, even if the attorney is associated with the conservator, and act without independent investigation upon the attorney's recommendation. An attorney employed under this subdivision shall receive reasonable compensation for his or her employment.
- (aa) Prosecute or defend an action, claim, or proceeding in any jurisdiction for the protection of estate property and of the conservator in the performance of a fiduciary duty.
- (bb) Execute and deliver an instrument that will accomplish or facilitate the exercise of a power vested in the conservator.
- (cc) Respond to an environmental concern or hazard affecting property as provided in section 5424.

(3) A conservator shall not sell or otherwise dispose of the protected individual's principal dwelling, real property, or interest in real property or mortgage, pledge, or cause a lien to be placed on any such property without approval of the court. The court shall only approve the sale, disposal, mortgage, or pledge of or lien against the principal dwelling, real property, or interest in real property if, after a hearing with notice to interested persons as specified in the Michigan court rules, the court considers evidence of the value of the property and otherwise determines that the sale, disposal, mortgage, pledge, or lien is in the protected individual's best interest.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 469, Eff. June 1, 2001;—Am. 2005, Act 204, Imd. Eff. Nov. 10, 2005;—Am. 2012, Act 173, Eff. Oct. 1, 2012.

Popular name: EPIC

700.5424 Powers regarding environmental matters.

Sec. 5424. (1) To respond to an environmental concern or hazard affecting property, the conservator may do any of the following:

- (a) Inspect property and the operation of business activity on property held by the conservator, including property held in or operated by a sole proprietorship, partnership, corporation, or limited liability company for the purpose of determining compliance with environmental law affecting the property, and respond to an actual or threatened violation of an environmental law affecting property held by the conservator.
- (b) Take action necessary to prevent, abate, or otherwise remedy an actual or threatened violation of an environmental law affecting property held by the conservator, either before or after the initiation of an enforcement action by a governmental body.
- (c) Settle or compromise at any time a claim against the estate that is asserted by a governmental body or

private party involving the alleged violation of an environmental law affecting property held in the trust or estate.

(d) Disclaim a power granted by a document, statute, or rule of law that, in the sole discretion of the conservator, may cause the conservator to incur personal liability under an environmental law.

(e) Decline to serve or resign as a conservator if the conservator reasonably believes that there is or may be a conflict of interest between the conservator in its fiduciary capacity and in its individual capacity because of a potential claim or liability that may be asserted against the conservator on behalf of the estate because of the type or condition of property held in the estate.

(f) Charge the cost of an inspection, review, abatement, response, cleanup, claim settlement, or remedial action authorized in this section against the estate income or principal.

(2) The powers listed in subsection (1) are by way of enumeration and not limitation on the conservator's power to respond to an environmental concern or hazard.

(3) A conservator is not personally liable to a beneficiary or other party for a decrease in the value of estate property by reason of the conservator's compliance with an environmental law, specifically including a reporting requirement under such a law. Neither the acceptance by the conservator of property nor a failure by the conservator to inspect property or a business operation creates an inference that there is or may be liability under an environmental law with respect to the property or business operation. The authority granted by this section is solely to facilitate the administration and protection of estate property and is not to impose greater responsibility or liability on the conservator than imposed by law absent these provisions.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5425 Distributive duties and powers of conservator.

Sec. 5425. A conservator may expend or distribute estate income or principal without court authorization or confirmation for the support, education, care, or benefit of the protected individual or the protected individual's dependents in accordance with the following principles:

(a) The conservator shall consider a recommendation relating to the appropriate standard of support, education, and benefit for the protected individual or a dependent made by a parent or guardian, if any. The conservator shall not be surcharged for money paid to a person or organization furnishing support, education, or care to the protected individual or a dependent in compliance with the recommendation of the protected individual's parent or guardian unless the conservator knows that the parent or guardian derives personal financial benefit from that payment, including a benefit by relief from a personal duty of support, or that the recommendation is clearly not in the protected individual's best interests.

(b) The conservator shall expend or distribute money reasonably necessary for the support, education, care, or benefit of the protected individual or a dependent with due regard to all of the following:

(i) The estate size, the conservatorship's probable duration, and the likelihood that the protected individual, at some future time, may be fully able to be wholly self-sufficient and able to manage business affairs and the estate.

(ii) The accustomed standard of living of the protected individual and the dependents.

(iii) Other money or sources used for the protected individual's support.

(c) The conservator may expend estate money for the support of an individual legally dependent on the protected individual and others who are members of the protected individual's household who are unable to support themselves and who are in need of support.

(d) The conservator may pay money to be expended under this section to any person, including the protected individual, to reimburse for an expenditure that the conservator might have made or in advance for a service to be rendered to the protected individual, if it is reasonable to expect the service will be performed and an advance payment is customary or reasonably necessary under the circumstances.

(e) In discharging a responsibility conferred by court order or this part, a conservator shall implement the principles described in section 5407(1) to the extent possible.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5426 Gifts; distribution to formerly protected individual; death of protected individual.

Sec. 5426. (1) If the estate is more than sufficient to provide for the purposes implicit in the distributions authorized by section 5425, a conservator for the protected individual, other than a minor, has the power to make a gift to charity or another object, as the protected individual might have been expected to make, in amounts that do not exceed an annual total of 20% of the estate income.

(2) If a minor who has not been adjudged disabled under section 5401(3) attains majority, after the

conservator meets all claims and expenses of administration and accounts to the court if required to do so by the court or by court rule, the conservator shall pay over and distribute all money and property to the formerly protected individual as soon as possible.

(3) If satisfied that a protected individual's disability, other than minority, has ceased, and after meeting all claims and expenses of administration, the conservator shall pay over and distribute all money and property to the formerly protected individual as soon as possible.

(4) If a protected individual dies, the conservator shall deliver to the court for safekeeping a will of the deceased protected individual that has come into the conservator's possession, shall inform the personal representative or a beneficiary named in the will of the delivery, and shall retain the estate for delivery to a duly appointed personal representative of the decedent or another person entitled to the delivery. If within 42 days after the protected individual's death another person is not appointed personal representative and an application or petition for appointment is not before the court, the conservator may petition to exercise a personal representative's powers and duties in order to be able to proceed to administer and distribute the decedent's estate. Upon petition for an order granting a personal representative's powers to a conservator, after notice to a person nominated as personal representative by a will of which the petitioner is aware and after notice as described in section 1401, the court may grant the petition upon determining that there is no objection and may endorse the letters of the conservator to note that the formerly protected individual is deceased and that the conservator has all of the powers and duties of a personal representative. An order made and entered under this section has the effect of an order for a personal representative's appointment as provided in section 3307 and parts 6 to 10 of article III. However, after administration, the estate in the conservator's name may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5427 Expansion or limitation of powers of conservator.

Sec. 5427. Subject to the restrictions in section 5407(3), at the time of appointment or later, the court may confer on a conservator, in addition to the powers conferred by sections 5423 to 5426, any power that the court itself could exercise under section 5407(2)(b) and (c). At the time of appointment or later, the court may limit the powers of a conservator otherwise conferred by sections 5423 to 5426 or previously conferred by the court, and may at any time remove or modify a limitation. If the court limits a power conferred on the conservator by sections 5423 to 5426 or specifies, as provided in section 5419(1), that title to some, but not all, of the protected individual's property vests in the conservator, the limitation or specification of property subject to the conservatorship shall be endorsed upon the letters of appointment.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5428 Preservation of estate plan; right to examine.

Sec. 5428. (1) When doing any of the following, the conservator and the court shall take into account the protected individual's estate plan as known to them, including a will, a revocable trust of which the individual is settlor, and a contract, transfer, or joint ownership arrangement originated by the protected individual with provisions for payment or transfer of a benefit or interest at the individual's death to another or others:

- (a) Investing the estate.
 - (b) Selecting estate property for distribution under section 5425 or 5426(1).
 - (c) Utilizing a power of revocation or withdrawal available for the protected individual's support and exercisable by the conservator or the court.
- (2) The conservator may examine the protected individual's will.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5429 Claims against protected individual; enforcement.

Sec. 5429. (1) A conservator may pay or secure from the estate a claim against the estate or against the protected individual arising before or during the conservatorship upon the presentation of the claim and allowance in accordance with the priorities in subsection (4). A claim may be presented by either of the following methods:

- (a) The claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and mailing address of the claimant, and the amount claimed.
- (b) The claimant may file a written statement of the claim with the court in the form prescribed by court

rule and may deliver or mail a copy of the statement to the conservator.

(2) The court shall consider a claim presented when the conservator receives the written statement of claim or when the claim is filed with the court, whichever happens first. A presented claim is allowed if it is not disallowed by written statement mailed by the conservator to the claimant within 63 days after the presentation of the claim. The presentation of a claim tolls a statute of limitations relating to the claim until 28 days after the claim's disallowance.

(3) A claimant whose claim has not been paid may petition the court for determination of the claim at any time before it is barred by the applicable statute of limitations and, upon due proof, may procure an order for the claim's allowance, payment, or security from the estate. If a proceeding is pending against a protected individual at the time of the appointment of a conservator or is initiated against the protected individual after the appointment, the moving party shall give notice of the proceeding to the conservator if the proceeding could result in creating a claim against the estate.

(4) If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, the conservator shall distribute the estate in money or in kind in payment of claims in the following order:

(a) Costs and expenses of administration.

(b) Claims of the federal or state government having priority under law.

(c) Claims incurred by the conservator for care, maintenance, and education that were previously provided to the protected individual or the protected individual's dependents.

(d) Claims arising before the conservatorship.

(e) All other claims.

(5) A preference shall not be given in the payment of a claim over another claim of the same class, and a claim due and payable is not entitled to a preference over a claim not due. However, if it appears that the assets of the conservatorship are adequate to meet all existing claims, acting in the protected individual's best interest, the court may order the conservator to give a mortgage or other security on the conservatorship estate to secure payment at some future date of any or all claims listed in subsection (4)(e).

(6) If a protected individual dies while under conservatorship, upon petition of the conservator and with or without notice, the court may hear a claim for burial expense or another claim as the court considers advisable. Upon hearing the claim, the court may enter an order allowing or disallowing the claim or a part of it and may provide in an order of allowance that the claim or a part of it shall be paid immediately if payment can be made without injury or serious inconvenience to the protected individual's estate.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5430 Personal liability of conservator.

Sec. 5430. (1) Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in a fiduciary capacity in the course of estate administration unless the conservator fails to reveal the representative capacity and identify the estate in the contract.

(2) A conservator is personally liable for an obligation arising from ownership or control of estate property or for torts committed in the course of estate administration only if personally at fault.

(3) A claim based on a contract entered into by a conservator in a fiduciary capacity, an obligation arising from ownership or control of the estate, or a tort committed in the course of estate administration may be asserted against the estate by proceeding against the conservator in the conservator's fiduciary capacity, whether or not the conservator is personally liable for the claim.

(4) A question of liability between the estate and the conservator personally may be determined in a proceeding for accounting, surcharge, indemnification, or other appropriate proceeding or action.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5431 Termination of proceeding.

Sec. 5431. The protected individual, conservator, or another interested person may petition the court to terminate the conservatorship. A protected individual seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. Upon determining, after notice and hearing, that the minority or disability of the protected individual has ceased, the court shall terminate the conservatorship. Upon termination, title to the estate property passes to the formerly protected individual or to successors subject to the provision in the order for expenses of administration and to directions for the conservator to execute appropriate instruments to evidence the transfer.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5432 Payment of debt and delivery of property to foreign conservator without local proceedings.

Sec. 5432. (1) A person indebted to a protected individual or having possession of property or of an instrument evidencing a debt, stock, or chose in action belonging to a protected individual may pay or deliver the money, property, or instrument to a conservator, guardian of the estate, or other similar fiduciary appointed by a court of the protected individual's state of residence upon being presented with proof of appointment and a sworn statement made by or on behalf of the fiduciary stating both of the following:

- (a) That no protective proceeding that relates to the protected individual is pending in this state.
- (b) That the foreign fiduciary is entitled to payment or to receive delivery.

(2) If the person to whom the sworn statement is presented is not aware of a protective proceeding pending in this state, payment or delivery in response to the demand and sworn statement discharges the debtor or possessor.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5433 Appointment of conservator in another state as temporary conservator.

Sec. 5433. (1) If a conservator has not been appointed in this state and a petition in a protective proceeding is not pending in this state, a conservator appointed, qualified, and serving in good standing in another state may be appointed immediately as temporary conservator in this state on filing with a court in this state an application for appointment, an authenticated copy of letters of appointment in the other state, and an acceptance of appointment. Letters of conservatorship for the temporary conservator expire 28 days after the date of appointment.

(2) Within 14 days after appointment as temporary conservator under subsection (1), the conservator shall give notice to all interested persons of his or her appointment and the right to object to the appointment. On filing proof of service of the notice with the court, the temporary conservator shall be appointed full conservator and the court shall issue letters of conservatorship accordingly.

(3) If an objection is filed to a conservatorship under this section, the conservatorship continues unless a court in this state enters an order removing the conservator.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2012, Act 545, Imd. Eff. Jan. 2, 2013.

Popular name: EPIC

PART 5

DURABLE POWER OF ATTORNEY AND DESIGNATION OF PATIENT ADVOCATE

700.5501 Durable power of attorney; definition; attorney-in-fact.

Sec. 5501. (1) A durable power of attorney is a power of attorney by which a principal designates another as the principal's attorney in fact in a writing that contains the words "This power of attorney is not affected by the principal's subsequent disability or incapacity, or by the lapse of time", or "This power of attorney is effective upon the disability or incapacity of the principal", or similar words showing the principal's intent that the authority conferred is exercisable notwithstanding the principal's subsequent disability or incapacity and, unless the power states a termination time, notwithstanding the lapse of time since the execution of the instrument.

(2) A durable power of attorney under this section shall be dated and signed voluntarily by the principal or signed by a notary public on the principal's behalf pursuant to section 33 of the Michigan notary public act, 2003 PA 238, MCL 55.293. The durable power of attorney shall be 1 or both of the following:

(a) Signed in the presence of 2 witnesses, neither of whom is the attorney-in-fact, and both of whom also sign the durable power of attorney.

(b) Acknowledged by the principal before a notary public, who endorses on the durable power of attorney a certificate of that acknowledgment and the true date of taking the acknowledgment.

(3) An attorney-in-fact designated and acting under a durable power of attorney has the authority, rights, responsibilities, and limitations as provided by law with respect to a durable power of attorney, including, but not limited to, all of the following:

(a) Except as provided in the durable power of attorney, the attorney-in-fact shall act in accordance with the standards of care applicable to fiduciaries exercising powers under a durable power of attorney.

(b) The attorney-in-fact shall take reasonable steps to follow the instructions of the principal.

(c) Upon request of the principal, the attorney-in-fact shall keep the principal informed of the

attorney-in-fact's actions. The attorney-in-fact shall provide an accounting to the principal upon request of the principal, to a conservator or guardian appointed on behalf of the principal upon request of the guardian or conservator, or pursuant to judicial order.

(d) The attorney-in-fact shall not make a gift of all or any part of the principal's assets, unless provided for in the durable power of attorney or by judicial order.

(e) Unless provided in the durable power of attorney or by judicial order, the attorney-in-fact, while acting as attorney-in-fact, shall not create an account or other asset in joint tenancy between the principal and the attorney-in-fact.

(f) The attorney-in-fact shall maintain records of the attorney-in-fact's actions on behalf of the principal, including transactions, receipts, disbursements, and investments.

(g) The attorney-in-fact may be liable for any damage or loss to the principal, and may be subject to any other available remedy, for breach of fiduciary duty owed to the principal. In the durable power of attorney, the principal may exonerate the attorney-in-fact of any liability to the principal for breach of fiduciary duty except for actions committed by the attorney-in-fact in bad faith or with reckless indifference. An exoneration clause is not enforceable if inserted as the result of an abuse by the attorney-in-fact of a fiduciary or confidential relationship to the principal.

(h) The attorney-in-fact may receive reasonable compensation for the attorney-in-fact's services if provided for in the durable power of attorney.

(4) Before exercising authority under a durable power of attorney, an attorney-in-fact shall execute an acknowledgment of the attorney-in-fact's responsibilities that contains all of the substantive statements in substantially the following form:

I, _____, have been appointed as attorney-in-fact for _____, the principal, under a durable power of attorney dated _____. By signing this document, I acknowledge that if and when I act as attorney-in-fact, all of the following apply:

(a) Except as provided in the durable power of attorney, I must act in accordance with the standards of care applicable to fiduciaries acting under durable powers of attorney.

(b) I must take reasonable steps to follow the instructions of the principal.

(c) Upon request of the principal, I must keep the principal informed of my actions. I must provide an accounting to the principal upon request of the principal, to a guardian or conservator appointed on behalf of the principal upon the request of that guardian or conservator, or pursuant to judicial order.

(d) I cannot make a gift from the principal's property, unless provided for in the durable power of attorney or by judicial order.

(e) Unless provided in the durable power of attorney or by judicial order, I, while acting as attorney-in-fact, shall not create an account or other asset in joint tenancy between the principal and me.

(f) I must maintain records of my transactions as attorney-in-fact, including receipts, disbursements, and investments.

(g) I may be liable for any damage or loss to the principal, and may be subject to any other available remedy, for breach of fiduciary duty owed to the principal. In the durable power of attorney, the principal may exonerate me of any liability to the principal for breach of fiduciary duty except for actions committed by me in bad faith or with reckless indifference. An exoneration clause is not enforceable if inserted as the result of my abuse of a fiduciary or confidential relationship to the principal.

(h) I may be subject to civil or criminal penalties if I violate my duties to the principal.

Signature: _____ Date: _____

(5) A third party is not liable to the principal or any other person because the third party has complied in good faith with instructions from an attorney-in-fact named in a durable power of attorney whether or not the attorney-in-fact has executed an acknowledgment that complies with subsection (4). A third party is not liable to the principal or any other person if the third party requires an attorney-in-fact named in a durable power of attorney to execute an acknowledgment that complies with subsection (4) before recognizing the durable power of attorney.

(6) An attorney-in-fact's failure to comply with subsection (4) does not affect the attorney-in-fact's authority to act for the principal as provided for in the durable power of attorney and does not affect the attorney-in-fact's responsibilities or potential liability to the principal.

(7) Subsections (2) to (6) do not apply to any of the following:

(a) A durable power of attorney executed before October 1, 2012.

(b) A delegation under section 5103 or a similar power of attorney created by a parent or guardian regarding the care, custody, or property of a minor child or ward.

(c) A patient advocate designation or a similar power of attorney relating to the principal's health care.

(d) A durable power of attorney that is coupled with an interest in the subject matter of the power.

(e) A durable power of attorney that is contained in or is part of a loan agreement, security agreement, pledge agreement, escrow agreement, or other similar transaction.

(f) A durable power of attorney in connection with a transaction with a joint venture, limited liability company, partnership, limited partnership, limited liability partnership, corporation, condominium, condominium association, condominium trust, or similar entity, including, without limitation, a voting agreement, voting trust, joint venture agreement, royalty agreement, license agreement, proxy, shareholder's agreement, operating agreement, partnership agreement, management agreement, subscription agreement, certification of incorporation, bylaws, or other agreement that primarily relates to such an entity.

(g) A power of attorney given primarily for a business or a commercial purpose.

(h) A power of attorney created on a form prescribed by a government or a governmental subdivision, agency, or instrumentality for a governmental purpose.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2012, Act 141, Imd. Eff. May 22, 2012.

Popular name: EPIC

700.5502 Durable power of attorney not affected by lapse of time, disability, or incapacity; legal description of real estate not required.

Sec. 5502. An act done by an attorney in fact under a durable power of attorney during a period of disability or incapacity of the principal has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal were competent and not disabled. Unless the instrument states a termination time, the power is exercisable notwithstanding the lapse of time since the execution of the instrument. A durable power of attorney that authorizes the agent to convey or otherwise exercise power over real estate does not need to contain the real estate's legal description.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5503 Relation of attorney in fact to court-appointed fiduciary.

Sec. 5503. (1) If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator, estate guardian, or other fiduciary charged with the management of all of the principal's property or all of his or her property except specified exclusions, the attorney in fact is accountable to the fiduciary as well as to the principal. The fiduciary has the same power to revoke or amend the power of attorney that the principal would have had if he or she were not disabled or incapacitated.

(2) By a durable power of attorney, a principal may nominate the conservator, guardian of his or her estate, or guardian of his or her person for consideration by the court if a protective proceeding for the principal's person or estate is commenced after execution of the power of attorney. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5504 Power of attorney not revoked until notice.

Sec. 5504. (1) The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person who, without actual knowledge of the principal's death, acts in good faith under the power. An action taken as provided in this subsection, unless otherwise invalid or unenforceable, binds the principal's successors in interest.

(2) The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney in fact or other person who, without actual knowledge of the principal's disability or incapacity, acts in good faith under the power. An action taken as provided in this subsection, unless otherwise invalid or unenforceable, binds the principal and his or her successors in interest.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5505 Proof of continuance of durable and other powers of attorney by affidavit.

Sec. 5505. (1) If an attorney in fact acts in good-faith reliance on a power of attorney, durable or otherwise, and executes a sworn statement stating that, at the time of the action, the attorney in fact did not have actual knowledge of the principal's death, disability, or incapacity or of the power's termination by revocation, the sworn statement is, in the absence of fraud, conclusive proof of the power's nontermination or nonrevocation.

(2) If the exercise of the power of attorney requires execution and delivery of an instrument that is

recordable, the sworn statement when authenticated for record is also recordable.

(3) This section does not affect a provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

History: 1998, Act 386, Eff. Apr. 1, 2000.

Popular name: EPIC

700.5506 Designation of patient advocate; "community mental health services program or hospital" defined.

Sec. 5506. (1) An individual 18 years of age or older who is of sound mind at the time a patient advocate designation is made may designate in writing another individual who is 18 years of age or older to exercise powers concerning care, custody, and medical or mental health treatment decisions for the individual making the patient advocate designation. An individual making a patient advocate designation under this subsection may include in the patient advocate designation the authority for the designated individual to make an anatomical gift of all or part of the individual's body in accordance with this act and part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123. The authority regarding an anatomical gift under this subsection may include the authority to resolve a conflict between the terms of the advance health care directive and the administration of means necessary to ensure the medical suitability of the anatomical gift.

(2) For purposes of this section and sections 5507 to 5515, an individual who is named in a patient advocate designation to exercise powers concerning care, custody, and medical or mental health treatment decisions is known as a patient advocate and an individual who makes a patient advocate designation is known as a patient.

(3) A patient advocate designation under this section must be in writing, signed, witnessed as provided in subsection (4), dated, executed voluntarily, and, before its implementation, made part of the patient's medical record with, as applicable, the patient's attending physician, the mental health professional providing treatment to the patient, the facility where the patient is located, or the community mental health services program or hospital that is providing mental health services to the patient. The patient advocate designation must include a statement that the authority conferred under this section is exercisable only when the patient is unable to participate in medical or mental health treatment decisions, as applicable, and, in the case of the authority to make an anatomical gift as described in subsection (1), a statement that the authority remains exercisable after the patient's death.

(4) A patient advocate designation under this section must be executed in the presence of and signed by 2 witnesses. A witness under this section shall not be the patient's spouse, parent, child, grandchild, sibling, presumptive heir, known devisee at the time of the witnessing, physician, or patient advocate or an employee of a life or health insurance provider for the patient, of a health facility that is treating the patient, or of a home for the aged as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106, where the patient resides, or of a community mental health services program or hospital that is providing mental health services to the patient. A witness shall not sign the patient advocate designation unless the patient appears to be of sound mind and under no duress, fraud, or undue influence.

(5) As used in this section, "community mental health services program or hospital" means a community mental health services program as that term is defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, or a hospital as that term is defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2003, Act 63, Imd. Eff. July 22, 2003;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005;—Am. 2008, Act 41, Imd. Eff. Mar. 17, 2008.

Popular name: EPIC

700.5507 Patient advocate designation; statement; acceptance.

Sec. 5507. (1) A patient advocate designation may include a statement of the patient's desires on care, custody, and medical treatment or mental health treatment, or both. A patient advocate designation may also include a statement of the patient's desires on the making of an anatomical gift of all or part of the patient's body under part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123. The statement regarding an anatomical gift under this subsection may include a statement of the patient's desires regarding the resolution of a conflict between the terms of the advance health care directive and the administration of means necessary to ensure the medical suitability of the anatomical gift. The patient may authorize the patient advocate to exercise 1 or more powers concerning the patient's care, custody, medical treatment, mental health treatment, the making of an anatomical gift, or the resolution of a conflict between the terms of the advance health care directive and the administration of means necessary to ensure the medical suitability of the anatomical gift that the patient could have exercised on his or her own behalf.

(2) A patient may designate in the patient advocate designation a successor individual as a patient advocate who may exercise the powers described in subsection (1) for the patient if the first individual named as patient advocate does not accept, is incapacitated, resigns, or is removed.

(3) Before a patient advocate designation is implemented, a copy of the patient advocate designation must be given to the proposed patient advocate and must be given to a successor patient advocate before the successor acts as patient advocate. Before acting as a patient advocate, the proposed patient advocate must sign an acceptance of the patient advocate designation.

(4) The acceptance of a designation as a patient advocate must include substantially all of the following statements:

1. This patient advocate designation is not effective unless the patient is unable to participate in decisions regarding the patient's medical or mental health, as applicable. If this patient advocate designation includes the authority to make an anatomical gift as described in section 5506, the authority remains exercisable after the patient's death.

2. A patient advocate shall not exercise powers concerning the patient's care, custody, and medical or mental health treatment that the patient, if the patient were able to participate in the decision, could not have exercised on his or her own behalf.

3. This patient advocate designation cannot be used to make a medical treatment decision to withhold or withdraw treatment from a patient who is pregnant that would result in the pregnant patient's death.

4. A patient advocate may make a decision to withhold or withdraw treatment that would allow a patient to die only if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to make such a decision, and that the patient acknowledges that such a decision could or would allow the patient's death.

5. A patient advocate shall not receive compensation for the performance of his or her authority, rights, and responsibilities, but a patient advocate may be reimbursed for actual and necessary expenses incurred in the performance of his or her authority, rights, and responsibilities.

6. A patient advocate shall act in accordance with the standards of care applicable to fiduciaries when acting for the patient and shall act consistent with the patient's best interests. The known desires of the patient expressed or evidenced while the patient is able to participate in medical or mental health treatment decisions are presumed to be in the patient's best interests.

7. A patient may revoke his or her patient advocate designation at any time and in any manner sufficient to communicate an intent to revoke.

8. A patient may waive his or her right to revoke the patient advocate designation as to the power to make mental health treatment decisions, and if such a waiver is made, his or her ability to revoke as to certain treatment will be delayed for 30 days after the patient communicates his or her intent to revoke.

9. A patient advocate may revoke his or her acceptance of the patient advocate designation at any time and in any manner sufficient to communicate an intent to revoke.

10. A patient admitted to a health facility or agency has the rights enumerated in section 20201 of the public health code, 1978 PA 368, MCL 333.20201.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2003, Act 63, Imd. Eff. July 22, 2003;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005;—Am. 2008, Act 41, Imd. Eff. Mar. 17, 2008.

Popular name: EPIC

700.5508 Determination of advocate's authority to act.

Sec. 5508. (1) Except as provided under subsection (3), the authority under a patient advocate designation is exercisable by a patient advocate only when the patient is unable to participate in medical treatment or, as applicable, mental health treatment decisions. The patient's attending physician and another physician or licensed psychologist shall determine upon examination of the patient whether the patient is unable to participate in medical treatment decisions, shall put the determination in writing, shall make the determination part of the patient's medical record, and shall review the determination not less than annually. If the patient's religious beliefs prohibit an examination and this is stated in the designation, the patient must indicate in the designation how the determination under this subsection shall be made. The determination of the patient's ability to make mental health treatment decisions shall be made under section 5515.

(2) If a dispute arises as to whether the patient is unable to participate in medical or mental health treatment decisions, a petition may be filed with the court in the county in which the patient resides or is located requesting the court's determination as to whether the patient is unable to participate in decisions regarding medical treatment or mental health treatment, as applicable. If a petition is filed under this subsection, the court shall appoint a guardian ad litem to represent the patient for the purposes of this subsection. The court shall conduct a hearing on a petition under this subsection as soon as possible and not

later than 7 days after the court receives the petition. As soon as possible and not later than 7 days after the hearing, the court shall determine whether or not the patient is able to participate in decisions regarding medical treatment or mental health treatment, as applicable. If the court determines that the patient is unable to participate in the decisions, the patient advocate's authority, rights, and responsibilities are effective. If the court determines that the patient is able to participate in the decisions, the patient advocate's authority, rights, and responsibilities are not effective.

(3) In the case of a patient advocate designation that authorizes a patient advocate to make an anatomical gift of all or part of the patient's body, the patient advocate shall act on the patient's behalf in accordance with part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123, and may do so only after the patient has been declared unable to participate in medical treatment decisions as provided in subsection (1) or declared dead by a licensed physician. The patient advocate's authority to make an anatomical gift remains exercisable after the patient's death.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2003, Act 63, Imd. Eff. July 22, 2003;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005;—Am. 2008, Act 41, Imd. Eff. Mar. 17, 2008.

Popular name: EPIC

700.5509 Authority and responsibilities of patient advocate; suspension.

Sec. 5509. (1) An individual designated as a patient advocate has the following authority, rights, responsibilities, and limitations:

(a) A patient advocate shall act in accordance with the standards of care applicable to fiduciaries in exercising his or her powers.

(b) A patient advocate shall take reasonable steps to follow the desires, instructions, or guidelines given by the patient while the patient was able to participate in decisions regarding care, custody, medical treatment, or mental health treatment, as applicable, whether given orally or as written in the designation.

(c) A patient advocate shall not exercise powers concerning the patient's care, custody, and medical or mental health treatment that the patient, if the patient were able to participate in the decision, could not have exercised on his or her own behalf.

(d) The designation cannot be used to make a medical treatment decision to withhold or withdraw treatment from a patient who is pregnant that would result in the pregnant patient's death.

(e) A patient advocate may make a decision to withhold or withdraw treatment that would allow a patient to die only if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to make such a decision, and that the patient acknowledges that such a decision could or would allow the patient's death.

(f) A patient advocate may choose to have the patient placed under hospice care.

(g) A patient advocate under this section shall not delegate his or her powers to another individual without prior authorization by the patient.

(h) With regard to mental health treatment decisions, the patient advocate shall only consent to the forced administration of medication or to inpatient hospitalization, other than hospitalization as a formal voluntary patient under section 415 of the mental health code, 1974 PA 258, MCL 330.1415, if the patient has expressed in a clear and convincing manner that the patient advocate is authorized to consent to that treatment. If a patient is hospitalized as a formal voluntary patient under an application executed by his or her patient advocate, the patient retains the right to terminate the hospitalization under section 419 of the mental health code, 1974 PA 258, MCL 330.1419.

(2) A patient advocate designation is suspended when the patient regains the ability to participate in decisions regarding medical treatment or mental health treatment, as applicable. The suspension is effective as long as the patient is able to participate in those decisions. If the patient subsequently is determined under section 5508 or 5515 to be unable to participate in decisions regarding medical treatment or mental health treatment, as applicable, the patient advocate's authority, rights, responsibilities, and limitations are again effective.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 1999, Act 52, Eff. Apr. 1, 2000;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005.

Popular name: EPIC

700.5510 Revocation of patient advocate designation.

Sec. 5510. (1) A patient advocate designation is revoked by 1 or more of the following:

(a) The patient's death, except that part of the patient advocate designation, if any, that authorizes the patient advocate to make an anatomical gift of all or part of the deceased patient's body in accordance with this act and part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123.

(b) An order of removal by the probate court under section 5511(5).

(c) The patient advocate's resignation or removal by the court, unless a successor patient advocate has been designated.

(d) The patient's revocation of the patient advocate designation. Subject to section 5515, even if the patient is unable to participate in medical treatment decisions, a patient may revoke a patient advocate designation at any time and in any manner by which he or she is able to communicate an intent to revoke the patient advocate designation. If there is a dispute as to the intent of the patient to revoke the patient advocate designation, the court may make a determination on the patient's intent to revoke the patient advocate designation. If the revocation is not in writing, an individual who witnesses a revocation of a patient advocate designation shall describe in writing the circumstances of the revocation, must sign the writing, and shall notify, if possible, the patient advocate of the revocation. If the patient's physician, mental health professional, or health facility has notice of the patient's revocation of a patient advocate designation, the physician, mental health professional, or health facility shall note the revocation in the patient's records and bedside chart and shall notify the patient advocate.

(e) A subsequent patient advocate designation that revokes the prior patient advocate designation either expressly or by inconsistency.

(f) The occurrence of a provision for revocation contained in the patient advocate designation.

(g) If a patient advocate designation is executed during a patient's marriage naming the patient's spouse as the patient advocate, the patient advocate designation is suspended during the pendency of an action for separate maintenance, annulment, or divorce and is revoked upon the entry of a judgment of separate maintenance, annulment, or divorce, unless the patient has named a successor individual to serve as a patient advocate. If a successor patient advocate is named, that individual acts as the patient advocate.

(2) The revocation of a patient advocate designation under subsection (1) does not revoke or terminate the agency as to the patient advocate or other person who acts in good faith under the patient advocate designation and without actual knowledge of the revocation. Unless the action is otherwise invalid or unenforceable, an action taken without knowledge of the revocation binds the patient and his or her heirs, devisees, and personal representatives. A sworn statement executed by the patient advocate stating that, at the time of doing an act in accordance with the patient advocate designation, he or she did not have actual knowledge of the revocation of the patient advocate designation is, in the absence of fraud, conclusive proof that the patient advocate did not have actual knowledge of the revocation at the time of the act.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2003, Act 63, Imd. Eff. July 22, 2003;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005;—Am. 2008, Act 41, Imd. Eff. Mar. 17, 2008.

Popular name: EPIC

700.5511 Binding effect; liability of provider; exception; dispute.

Sec. 5511. (1) Irrespective of a previously expressed or evidenced desire, a current desire by a patient to have provided, and not withheld or withdrawn, a specific life-extending care, custody, or medical treatment is binding on the patient advocate, if known by the patient advocate, regardless of the then ability or inability of the patient to participate in care, custody, or medical treatment decisions or the patient's competency.

(2) A person providing, performing, withholding, or withdrawing care, custody, or medical or mental health treatment as a result of the decision of an individual who is reasonably believed to be a patient advocate and who is reasonably believed to be acting within the authority granted by the designation is liable in the same manner and to the same extent as if the patient had made the decision on his or her own behalf.

(3) A person providing care, custody, or medical or mental health treatment to a patient is bound by sound medical or, if applicable, mental health treatment practice and by a patient advocate's instructions if the patient advocate complies with sections 5506 to 5515, but is not bound by the patient advocate's instructions if the patient advocate does not comply with these sections.

(4) A mental health professional who provides mental health treatment to a patient shall comply with the desires of the patient as expressed in the designation. If 1 or more of the following apply to a desire of the patient as expressed in the designation, the mental health professional is not bound to follow that desire, but shall follow the patient's other desires as expressed in the designation:

(a) In the opinion of the mental health professional, compliance is not consistent with generally accepted community practice standards of treatment.

(b) The treatment requested is not reasonably available.

(c) Compliance is not consistent with applicable law.

(d) Compliance is not consistent with court-ordered treatment.

(e) In the opinion of the mental health professional, there is a psychiatric emergency endangering the life of the patient or another individual and compliance is not appropriate under the circumstances.

(5) If a dispute arises as to whether a patient advocate is acting consistent with the patient's best interests or

is not complying with sections 5506 to 5515, a petition may be filed with the court in the county in which the patient resides or is located requesting the court's determination as to the continuation of the designation or the removal of the patient advocate.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005.

Popular name: EPIC

700.5512 Restrictions.

Sec. 5512. (1) A patient advocate cannot make a medical treatment decision under the authority of or under the process created by this section and sections 5506 to 5511 to withhold or withdraw treatment from a pregnant patient that would result in the pregnant patient's death.

(2) A health care provider shall not require a patient advocate designation to be executed as a condition of providing, withholding, or withdrawing care, custody, or medical or mental health treatment.

(3) A life or health insurer shall not do any of the following because of the execution or implementation of a patient advocate designation or because of the failure or refusal to execute or implement such a designation:

- (a) Refuse to provide or continue coverage to the patient.
- (b) Limit the amount of coverage available to a patient.
- (c) Charge a patient a different rate.
- (d) Consider the terms of an existing policy of life or health insurance to have been breached or modified.
- (e) Invoke a suicide or intentional death exemption or exclusion in a policy covering the patient.

(4) A patient advocate designation shall not be construed to condone, allow, permit, authorize, or approve suicide or homicide.

(5) Except as provided in subsections (2) and (3), sections 5506 to 5515 only apply to or affect an individual who has executed a patient advocate designation or an individual acting for or on behalf of another individual who has executed a patient advocate designation.

(6) Nothing in sections 5506 to 5515 shall be considered to authorize or compel care, custody, or medical or mental health treatment decisions for a patient who objects on religious grounds.

(7) A designation executed before the effective date of this section with the intent of accomplishing a similar purpose as this section is valid but is subject to section 5506(1) and sections 5507 to 5515; must be in writing, signed, witnessed or notarized, dated, and executed voluntarily; and, before its implementation, must be made part of the patient's medical or, as applicable, mental health treatment record.

History: 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005.

Popular name: EPIC

700.5513 Repealed. 2004, Act 532, Imd. Eff. Jan. 3, 2005.

Compiler's note: The repealed section pertained to conflict with provision of mental health code.

Popular name: EPIC

700.5515 Revocation of patient advocate designation; waiver; exercise of power by patient advocate; conditions.

Sec. 5515. (1) A patient may waive the right to revoke a patient advocate designation as to the power to exercise mental health treatment decisions by making the waiver as part of the document containing the designation. However, mental health treatment provided to a patient who has communicated his or her intent to revoke a designation in which the patient has waived his or her right to revoke shall not continue for more than 30 consecutive days, and the waiver does not affect the patient's rights under section 419 of the mental health code, 1974 PA 258, MCL 330.1419.

(2) A patient advocate may exercise the power to make mental health treatment decisions only if a physician and a mental health practitioner both certify, in writing and after examination of the patient, that the patient is unable to give informed consent to mental health treatment. The patient may, in the document containing the patient advocate designation, designate a physician, a mental health practitioner, or both, to make the determination under this subsection. If a physician or mental health practitioner designated by the patient is unable or unwilling to conduct the examination and make the determination required by this subsection within a reasonable time, the examination and determination shall be made by another physician or mental health practitioner, as applicable.

History: Add. 2004, Act 532, Imd. Eff. Jan. 3, 2005.

Popular name: EPIC

700.5520 Guardian making medical or mental health decisions; designation of another individual prohibited.

Sec. 5520. A legally incapacitated individual who has a guardian with responsibility for making medical or mental health treatment decisions cannot then designate another individual to make medical or mental health treatment decisions for the legally incapacitated individual.

History: Add. 2000, Act 312, Eff. Jan. 1, 2001;—Am. 2004, Act 532, Imd. Eff. Jan. 3, 2005.

Popular name: EPIC